

APPELLATE COURT NO.

72966

IN THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

REINALDO DENNES

Appellant,

VS.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM 263RD DISTRICT COURT OF HARRIS COUNTY,

TEXAS

Judge Jim Wallace, Presiding

CAUSE NO. 750,313

August 28, 1997

Reporter's Record

Volume 33 of **39** Volumes

Sharon Kay Cook
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED IN
COURT OF CRIMINAL APPEALS

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Troy C. Bennett, Jr., Clerk

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Volume 33

Trial

August 28, 1997

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1 CAUSE NO. 750,313
2 STATE OF TEXAS IN THE 263RD DISTRICT COURT
3 VS. OF
4 REINALDO DENNES HARRIS COUNTY, T E X A S

5 A P P E A R A N C E S:

6 For the State: Mr. Mark Vinson
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16 BE IT REMEMBERED that upon this the 28th
17 day of August, A. D. 1997, the above entitled and
18 numbered cause came on for trial before the Honorable
19 Jim Wallace, Judge of the 263rd District Court of
20 Harris County, Texas; and the State appearing in
21 person and the Defendant appearing in person and by
22 counsel, announced ready for trial, after a jury
23 having been selected, and all preliminary matters
24 having been disposed of, the following proceedings
25 were had, viz:

1 (Jury came into the courtroom.)

2 THE COURT: Please be seated, ladies and
3 gentlemen.

4 Good morning.

5 Okay. We are going to try to get started
6 quickly as possible. My understanding, we will
7 definitely, at least I believe we will definitely, be
8 through with the witnesses and maybe further along,
9 and that's what our goal will be, if possible, so
10 let's get started. And we have a new witness.

11 Please call your next witness.

12 MR. ODOM: Daisy Dennes, Your Honor.

13 THE COURT: Let me mention to the
14 alternates. The law is, once the jury commences the
15 deliberation, you are to be released or you can stick
16 around o hear the verdict or, I imagine, the verdict
17 will be published. If not, certainly feel free to
18 call up here.

19 Mr. Odom.

20

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1 DAISY MARIE DENNES,
2 was called as a witness by the defense and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ODOM:

6 Q Would you state your name for the ladies
7 and gentlemen of the jury.

8 A My name is Daisy Maria Dennes.

9 Q Where do you live, Ms. Dennes?

10 A 6415 Wild River, Katy, Texas.

11 Q And are you part of the Katy, Texas, that
12 is in Harris County or in the part, that other side of
13 the county?

14 A No, Harris County.

15 Q How do you know the defendant, Reinaldo
16 Dennes?

17 A I am Reinaldo's ex-wife. I was married to
18 him for 20 years.

19 Q When were you all married?

20 A We were married in 1973.

21 Q When did you get a divorce?

22 A 1990, if I'm not mistaken.

23 Q Back in 1990?

24 A If I'm not mistaken, around there.

25 Q You were not married to Ray Dennes in

1 January of 1996?

2 A No, sir, I wasn't.

3 Q During your marriage with Mr. Dennes, did
4 you all have any children?

5 A Yes, sir. I have a 21 year-old son and a
6 12-year-old daughter.

7 Q And during the time that you were married,
8 I would like to ask, if you recall, whether or not
9 there was an event that occurred that resulted in a
10 scarring on the part of Mr. Dennes?

11 A Yes, sir.

12 Q And tell the ladies and gentlemen of the
13 jury about when that would have been.

14 A November, Thanksgiving of 1990, there was
15 an accident at my house.

16 Q And without going into a great deal of
17 detail, what did this incident involve? How is it --
18 how is it that Ray Dennes got burned?

19 A Reinaldo was working on a lawn mower
20 tractor, riding, that was inside the garage. My
21 daughter was outside, in the driveway, playing, and I
22 was helping Ray. He was putting gas in the gas tank,
23 to try to start it because it wouldn't start. When he
24 cranked the key, flames came out, and he was having a
25 small cup in his hand, in his right hand. The cup

1 started getting fire. It got flames on it, and he
2 poured the cup back to his back. At that time my
3 daughter was in the driveway and outside of the
4 garage. And we hear screaming and here was my
5 daughter being burned severely. And when Ray saw
6 that, just started jumping and running and practically
7 saved my daughter. He burned himself severely on his
8 right hand. He burned himself in the abdomen area.

9 Q Ms. Dennes, let me ask the questions.
10 First of all, your daughter did not die,
11 did she?

12 A No, she didn't die. She received severe
13 burns on her back and her arms, her neck area.

14 Q Was Ray able to roll your daughter until
15 the flames went out?

16 A Yes. Ray carried her and threw her on the
17 grass and that's how he obtained his burns because he
18 stopped the fire on her with his body.

19 Q Now, in regards to his burns, where was
20 Ray burned?

21 A Ray was burned severely on his right arm,
22 and he, also, was burned on the left arm. He was
23 burned around his neck area and his abdomen.

24 Q Now, how long did Ray stay in the hospital
25 with his burns?

1 A Ray stayed in the hospital for about 17 to
2 18 days.

3 Q Which hospital did he go to?

4 A Hermann Hospital, the burn unit.

5 Q And were there varying degrees of burns on
6 different parts of his body?

7 A Yes, sir.

8 Q And do you know -- I believe you testified
9 that he had burns on his right arms, left arm, his
10 neck and his abdomen?

11 A Yes, sir, that's correct.

12 Q How severe were the burns on his neck?

13 A It's first degree on the neck. It's very
14 mild.

15 Q You understand a first-degree burn as
16 being the mildest of the three degrees of burns?

17 A Yes, sir. I am in the medical field.

18 Q And what was the burn on his left arm,
19 what type of burn was that?

20 A It was a third degree. He had to have
21 grafting on it.

22 Q And what about his right arm?

23 A I'm sorry. I'm sorry. His right arm was
24 the one that was third degree, his right arm.

25 Q If you look at him, it is your left, his

1 right. His right arm had third-degree burns?

2 A Yes, sir.

3 Q And what was required on his right arm?

4 A It was grafting and it didn't take so he
5 has got serious markings.

6 Q The forearm is serious?

7 A Yes, sir. It's very noticeable, yes,
8 sir.

9 Q Can you stand up briefly for us. Can you
10 point out where the burns scared.

11 A It starts about right here and it comes
12 all the way up to here. Also, in the hand, he has got
13 markings, not severe but you can tell markings.

14 Q If I understand what you said on the hand,
15 the burns are not as serious?

16 A Not right here, on top of the palm, it
17 starts right here.

18 Q Have your seat. Thank you.

19 What about his left arm?

20 A His left arm, there is hardly no marking
21 on it.

22 Q That was a first-degree burn or a minor?

23 A Yes, it was like a first degree to a minor
24 burn.

25 Q What about on his abdomen? How much of a

1 burning did he have on the abdomen?

2 A His abdomen was like a second-degree
3 burning and he has got markings on the whole belt
4 line.

5 Q Now, you are doing a gesture there. I'm
6 not good at what gesture. Can you stand up again,
7 point out on the abdomen where the burns were.

8 A About this area, he has markings from
9 about here to here of a burn and it's a dark marking
10 and you can see it -- that is, it is burned.

11 Q Okay. Now, the abdomen burn, let me talk,
12 as years or the time has gone by, have the burns on
13 his left arm and his neck have those scars diminished?

14 A Yes, sir.

15 Q How about the scars on his right arm and
16 his abdomen?

17 A No, sir. His right arm, it's very ugly
18 looking, very severe marking. And his abdomen is
19 still marked. You can see if you see him without a
20 shirt.

21 Q His right arm is noticeably scared?

22 A Yes, it is.

23 Q And by that, do you mean it's a different
24 color? Tell the ladies and gentlemen of the jury what
25 you mean by scar.

1 A He has got -- on the whole forearm he has
2 a real thickness of skin and it's pink, dark color
3 pink, and you could tell that it's severely burned.

4 Q And on his abdomen, what does his abdomen
5 appear like?

6 A His abdomen has a marking like a dark
7 brown marking.

8 Q Now, when this incident occurred, did I
9 ask you to retrieve any records that you had in
10 regards to this particular incident?

11 A Yes, sir.

12 Q And did you do so?

13 A Yes, sir.

14 Q And did you bring those records to me?

15 A Yes, sir.

16 MR. ODOM: May I approach the witness?

17 THE COURT: You may.

18 MR. SMYTH: May I take the witness on voir
19 dire?

20 THE COURT: You may.

21

22

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25

VOIR DIRE EXAMINATION

1

2 BY MR. SMYTH:

3 Q These records that you have given to Mr.
4 Odom, first of all, are you a custodian of the medical
5 records for Hermann Hospital?

6 A -- No, sir, I'm not.

7 Q These are records that you collected at
8 home?

9 A No, sir, that's wrong.

10 Q Well, where did you get them?

11 A I picked them up from the attorney that
12 handled Desiree's case.

13 Q I assume there must have been some kind of
14 an insurance suit?

15 A She was -- what do you call it, yes, they
16 gave her.

17 Q What?

18 A They gave her money, for her age, to be
19 able to have surgeries on her body. She will need
20 extensive surgeries on her body.

21 Q How much money from the insurance company.
22 ?

23 MR. ODOM: Objection, I don't know that
24 it has any relevance as to whether or not Mr.

25 Dennes --

1 THE COURT: Sustained.

2 Q These are medical records that you got
3 from an attorney that represented your daughter; is
4 that correct?

5 A Yes, sir.

6 Q And when did you get these?

7 A Excuse me, sir?

8 Q When did you get these?

9 A I got them three days ago.

10 Q So you can't vouch for the accuracy of
11 these records. These records reflect something that
12 happened back in 1990; is that correct?

13 A I don't understand your question.

14 Q These records would go to an incident that
15 occurred, according to you, back in 1990?

16 A Yes, sir.

17 Q And they reflect the medical condition of
18 the defendant back in 1990?

19 A That is correct.

20 MR. SMYTH: Your Honor, I object to these
21 documents.

22 THE COURT: Sustained.

23

24

25

1 DIRECT EXAMINATION CONTINUED

2 BY MR. ODOM:

3 Q Ms. Dennes, did you see these medical
4 records back in 1990?

5 A Yes, sir. I had copies of the bills.
6 Yes, sir.

7 Q No, I'm not talking about the bills. I am
8 talking about like the actual medical records. Have
9 you seen that before?

10 A Yes, sir.

11 MR. ODOM: May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 (Whereupon, Defendant's Exhibit No. 6 was
15 marked for identification.)

16 Q Ms. Dennes, I show you what has been
17 marked as Defendant's Exhibit 6. Can you recognize
18 that document as a document that you have seen
19 previously without telling us what it is?

20 A Yes, sir, it's --

21 Q Not now. I just want to know if you can
22 recognize.

23 A Yes, sir.

24 Q Now, do you recognize that document as
25 being a document that you have seen back when this

1 incident occurred, whenever, after this incident
2 occurred?

3 A Yes, sir.

4 Q Now, there is a lot of records in here,
5 right?

6 A Yes, sir.

7 Q You don't remember seeing all these
8 records, do you?

9 A No, sir.

10 Q Do you remember that document that we have
11 labeled Defendant's Exhibit 6?

12 A Yes, sir.

13 Q All right. You don't know everything that
14 is in that document, do you?

15 A No, sir, I don't.

16 Q But you recall that as one of the
17 documents that was obtained at that time.

18 MR. SMYTH: Object to leading, Judge.

19 THE COURT: Sustained.

20 Q (Mr. Odom) Do you recognize that
21 document?

22 A Yes.

23 Q How is it you know that document is a
24 document that you saw back in 1990?

25 A Because it states about Reinaldo and it's

1 about his burns.

2 Q Yeah. What I am asking, do you remember
3 it as being a document you have seen before?

4 A Because it states the amount of degree
5 that he was burned.

6 MR. ODOM: At this time I offer
7 Defendant's Exhibit 6.

8 MR. SMYTH: Object, there is no proper
9 predicate laid for that document. She said she
10 doesn't know what is contained in it.

11 THE COURT: Sustained.

12 Q (Mr. Odom) Do you have any question
13 about the burns that Mr. Dennes received?

14 A I don't understand your question.

15 Q Is there any doubt in your mind? You may
16 not know what is in that document before you but what
17 you testified about his burns. Those are things that
18 you have seen before?

19 A Yes, sir. I was with Reinaldo for 17 or
20 18 days. He was in the burn unit. I spent 17 days in
21 the hospital.

22 THE COURT: Ma'am, let's make sure you
23 answer the question that is asked.

24 Q (Mr. Odom) Have you seen these burns on
25 Mr. Dennes since then?

1 A Yes, sir.

2 Q Are they noticeable?

3 A Yes, sir.

4 Q If you were to see Mr. Dennes without his
5 shirt on, is there any way you cannot see these burns?

6 A No, sir.

7 Q Unless it was dark and you couldn't see
8 him, right?

9 A Yes, sir.

10 MR. ODOM: Pass the witness.

11 THE COURT: Thank you, Mr. Odom.

12

13 CROSS EXAMINATION

14 BY MR. SMYTH:

15 Q In the room you are not going to notice
16 the --

17 A Not if it is completely dark.

18 Q And dark like when people go to bed
19 tonight at night together, a lot of people turn off
20 the lights?

21 A Yes, sir. When you go to sleep, you are
22 right.

23 Q Before you turn to go to sleep?

24 A If you do turn the light off, yes, you
25 cannot see them.

1 Q You wouldn't notice those burns?

2 A Not in a complete dark room, no, sir.

3 Q And if Mr. Dennes was wearing a long
4 sleeved shirt that came down to his wrists, you
5 wouldn't see any burns on his right arm, would you?

6 A Yes, you can.

7 Q With a long sleeve, you might see on his
8 hand?

9 A If he stretches his arm, yes, you could
10 see this part.

11 MR. SMYTH: Your Honor, may I stand up?

12 THE COURT: Yes.

13 Q In this position, my hands hanging down
14 this way, are you going to see any burns on the right
15 forearm?

16 A Not up on the forearm but to the bottom,
17 to the wrist area, yes, sir.

18 Q So if you are looking, you might see
19 something around his wrist?

20 A You would if you are looking.

21 Q If you are looking?

22 A Yes, looking, yes, you could see it.

23 Q And you say the burns to his left arm and
24 his burns to the neck have diminished over time?

25 A Yes, sir.

1 Q When was the last time you saw these
2 burns?

3 A Which ones?

4 Q The burns to the forearm.

5 A I see them three weeks ago.

6 Q When was the last time you saw the burns
7 to his abdomen?

8 A Well, I haven't been with Ray for four
9 years.

10 Q I thought you got divorced in 1990?

11 A No, sir, I didn't get divorced.

12 Q When did you get divorced from the
13 defendant?

14 A I think about four years ago, sir. I'm
15 not sure.

16 Q Since 1993. This is 1997?

17 A Yes, 1993, yes, sir.

18 Q 1993?

19 A Around there. Uh-huh.

20 Q So somewhere between 1990 and 1993, you
21 got divorced from Reinaldo?

22 A 1993, sir. Yes, sir.

23 Q So the last time you saw those burns would
24 have been in 1993?

25 A No, sir, that's not necessary.

1 Q I believe -- well, when is the last time
2 you saw the burns?

3 A Exactly I can't give you a date but Ray
4 used to come to my house periodically, riding a
5 bicycle. And he rides a bicycle in no shirt. Lots of
6 times he comes to my house, when he was out all the
7 time, to see my daughter, so it has been ever since
8 before he was in jail. He has been in jail for a year
9 and a half. You could say right before he went to
10 jail.

11 Q When was the last time you saw it?

12 A Yes, sir.

13 Q 18 months ago?

14 A Well, I don't know exactly. He has been
15 in jail about around that time. Yes, sir.

16 Q Now, where did this accident occur?

17 A It occurred in our house.

18 Q Did it occur when you were living on Wild
19 River and/or did it at your 1706 Harwick?

20 A Yes, sir.

21 Q And you move out of that house on Harwick?

22 A Correct. Right. I bought a house right
23 before the accident happened.

24 Q Right before the accident happened you
25 bought a new house?

1 A Yes, we were moving to the other house.

2 Q You sold the house to a guy named David
3 Balderus?

4 A Yes.

5 Q And you currently live on Wild River; is
6 that correct?

7 A Yes, sir. That's correct.

8 Q When did you move from -- did you move
9 from Harwick to Wild River or to Weimer?

10 A Weimer Road.

11 Q When did you move to Weimer Road?

12 A When we bought the house.

13 Q Is that going to be November or December
14 of 1990?

15 A Yeah. It was about December. Ray was in
16 the hospital when I moved into the house.

17 Q When did you move from Weimer Road to the
18 Wild River address in Katy?

19 A September '96.

20 Q You have kept pretty close with your
21 husband even though you got divorce; is that correct?

22 A Yes, sir.

23 Q In fact, are you the one that went to
24 Florida to pick up that car --

25 MR. SMYTH: May I approach, Your Honor?

1 THE COURT: You may.

2 MR. SMYTH: Thank you, Your Honor.

3 Q Was that house over there on Weimer Road
4 was that your house?

5 A It was mine and Reinaldo's. It became
6 mine after the divorce.

7 Q So you got the whole house in the divorce?

8 A Yes, sir.

9 Q And that house on Wild River, that's your
10 house?

11 A Yes, sir.

12 MR. SMYTH: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 Q Ma'am, I'm going to show you what has been
16 marked as State's Exhibit 74 and 75 and ask you if you
17 recognize that particular vehicle?

18 A No, sir.

19 Q You've never seen that car before?

20 A No, sir.

21 Q You didn't go to Florida and pick up that
22 car?

23 A No, sir.

24 MR. ODOM: Obviously she didn't go to pick
25 up. She doesn't recognize it.

1 MR. SMYTH: If the Court will indulge me.

2 MR. ODOM: I guess my objection, it has
3 been asked and answered.

4 THE COURT: Go ahead.

5 Q (Mr. Symth) You were not involved in the
6 sale of this car to a man in December of 1996.

7 MR. ODOM: Objection, Judge, it's assuming
8 facts not in evidence. He is attempting to get in
9 evidence through a question.

10 MR. SMYTH: May we approach the bench?

11 (Whereupon, the following proceedings were
12 held before the Bench.)

13 MR. SMYTH: The Court will recall in the
14 hearing we had in this case this defendant testified
15 this woman right here sold that car for him and got
16 \$20,000, which he gave to his attorneys.

17 MR. ODOM: I don't know that he said it
18 was this woman. I thought it was his family said
19 that.

20 MR. SMYTH: He was married. The Court may
21 have a better memory than I.

22 THE COURT: I know that he sold the
23 vehicle for twenty grand.

24 MR. ODOM: I think the evidence may have
25 been that she gave counsel money but I don't think the

1 evidence was that she actually sold the car.

2 THE COURT: I don't know who sold the car
3 nor what type of vehicle it was.

4 MR. SMYTH: The type we talked about that
5 SNX Accura that was bought for \$28,000 and sold for
6 \$20,000.

7 THE COURT: And you basically asked her if
8 she recognizes the vehicle or did she.

9 MR. SMYTH: I'm going to get her on
10 perjury is what I am going to do, if she is not going
11 to tell the truth.

12 MR. ODOM: Because she said she didn't
13 recognize that car?

14 MR. SMYTH: Well, I'll ask her if she sold
15 that car.

16 THE COURT: I'll let you ask that but
17 don't get too specific at the present time because you
18 don't need that.

19 MR. ODOM: And, for the record, I don't
20 have a copy of that transcript with me but if the
21 indication is that it was not her that sold that car,
22 she is hearing what is being said and based upon what
23 Mr. Smyth just said, he is intimidating that witness
24 on the record, and if that's not what that transcript
25 said and that's not made in good faith.

1 THE COURT: Mr. Odom, the only way she
2 could be intimidated if she wasn't being truthful.
3 You have to tell the truth.

4 MR. ODOM: For him to say that he has
5 sworn testimony that she is the one that sold the
6 car --

7 THE COURT: It's also states here that I
8 don't remember if she has and I don't remember the
9 car.

10 MR. ODOM: I don't either, Judge.

11 THE COURT: Let's continue.

12 (Whereupon, the following proceedings were
13 held before the jury.)

14 Q (Mr. Symth) Ms. Dennes?

15 A Yes, sir.

16 Q Were you involved in the sale of any car
17 belonging to Reinaldo Dennes back in November,
18 December, 1996?

19 A No, sir.

20 Q Not you?

21 A No, sir.

22 Q Now, on January 24th, let's say January
23 21st through January 24th, 1996, was Reinaldo Dennes
24 with you?

25 A No, sir.

1 MR. SMYTH: Nothing further. Thank you
2 very much.

3

4 REDIRECT EXAMINATION

5 BY MR. ODOM:

6 Q Ms. Dennes, Ray Dennes has remarried since
7 your divorce?

8 A Yes, sir.

9 Q And his present wife is Louisa Dennes?

10 A Yes, sir. That's correct.

11 Q Now, Mr. Smyth asked an interesting
12 question and, that is, if it's pitch black, you can't
13 see these burns, can you?

14 A No, sir, not if it's pitch black.

15 Q If it is pitch black, you can't see them?

16 A No, sir.

17 Q But let me ask you this: Are these burns
18 raised from the skin? Is his skin smooth or raised
19 and bumpy?

20 A His skin on the right arm is very raised
21 and on the abdomen, you could see, feel it, at least,
22 when I was with him four years ago.

23 Q So even if it was pitch black and somehow
24 or another you managed to bump into Ray in the total
25 dark without having seen him beforehand, you'd still

1 be able to feel that he has scars on him; isn't that
2 true?

3 A Yes, sir, definitely.

4 MR. ODOM: Pass the witness.

5 THE COURT: Thank you.

6 Mr. Smyth, anything further?

7

8 RECROSS EXAMINATION

9 BY MR. SMYTH:

10 Q You say you would be able to feel the ones
11 on his arm pretty readily?

12 A Yes, sir.

13 Q And the ones on the abdomen you could
14 feel?

15 A I haven't felt that for four years so I
16 can't answer.

17 Q If you are going to feel around and
18 looking for it, you might feel?

19 A If you are looking for it, you could see
20 them; not even looking for them, you can see it.

21 MR. SMYTH: Thank you, ma'am. I
22 appreciate it.

23 THE COURT: You may be excused. Thank you
24 for your testimony.

25 MR. ODOM: May this witness be excused?

1 THE COURT: Call your next witness, Mr.
2 Odom.

3 MR. ODOM: At this time I would like to
4 make a jury display on the part of my client to the
5 jury in regards to his body from the waist up.

6 THE COURT: Mr. Smyth, Mr. Vinson, any
7 comment?

8 MR. SMYTH: If he wants to do it, that's
9 fine with us.

10 THE COURT: Are you going to question
11 him?

12 MR. ODOM: No, Judge, similar when they
13 went.

14 THE COURT: The State has no objection.
15 It's fine with me.

16 MR. ODOM: Mr. Dennes, would you please
17 step out here.

18 (The defendant displayed his burns.)

19 MR. ODOM: Take your coat off and your
20 tie.

21 Mr. Dennes, can you display your arms in
22 this manner to the jury.

23 MR. SMYTH: May I observe, Your Honor?

24 THE COURT: Certainly.

25 MR. ODOM: Can you lift up your tee

1 shirt?

2 At this time the State will rest.

3 THE COURT: You said the State?

4 MR. ODOM: The defense. It's been a long
5 trial.

6 THE COURT: What says the State?

7 MR. VINSON: May we approach the bench,
8 Your Honor?

9 THE COURT: You certainly may.

10 (Off-the-record discussion held.)

11 THE COURT: What says the state? On
12 behalf of the State, who is doing the speaking?

13 MR. SMYTH: Judge, I would, at this time,
14 offer into evidence State's Exhibit 166 through 172,
15 which are the large diagrams. We have reproduced them
16 in the smaller version, which we would offer as 166 A
17 through 172 A.

18 THE COURT: Let's tender those to Mr.
19 Odom.

20 MR. ODOM: Judge, I have seen them and I
21 would re-urge my original objections that have not
22 been covered and the alterations that were so I don't
23 re-urge.

24 THE COURT: Say that again.

25 MR. ODOM: Well, I made some objections at

1 the time. Some of my objections have been resolved:
2 Others have not. Those which have not, I would
3 re-urge so I don't waive those objections at this
4 time.

5 THE COURT: So are you saying you object?

6 MR. ODOM: Yes, sir. On those grounds
7 that I had previously expressed.

8 THE COURT: May I see those, please?

9 MR. VINSON: Yes, Your Honor.

10 (Whereupon, the following proceedings were
11 held before the Bench.)

12 THE COURT: Again, I'm asking, show me now
13 these modified documents, what it is you are objecting
14 to.

15 MR. ODOM: My original objection, other
16 than the fact that it had certain categories on it,
17 was that there are conclusions on these exhibits.
18 There's innuendos on the exhibits and, as such, they
19 should only be admitted for demonstrative purposes as
20 opposed to exhibits as to fact.

21 THE COURT: So can you point something out
22 to me that's not anything as part of the evidence?

23 MR. ODOM: I'm looking. For example, it
24 says "Estrella Martinez" on one of the exhibits, that
25 is not -- that is a controverted issue.

1 THE COURT: Even though they have got up,
2 says "the person in the possession of the phone."

3 MR. ODOM: I think it is controverted that
4 she was in possession of the phone. It is, of course,
5 the defense's position that she did not have the phone
6 and, as such, not admissible. In essence, the gist of
7 my argument: There are a number of items like that on
8 the exhibit but that's the gist of our argument.

9 THE COURT: The objections are overruled.
10 166 A through 172 A are admitted.

11 (Whereupon, the following proceedings were
12 held before the jury.)

13 THE COURT: Anything further?

14 MR. VINSON: No, Your Honor, the State
15 will rest and close.

16 THE COURT: I thought you had something
17 else you were going to offer.

18 MR. VINSON: Yes, that will be in a
19 separate packet.

20 THE COURT: Okay, very well.

21 Ladies and gentlemen, you have now heard
22 all of the evidence that you are going to hear in this
23 case. What we have got to do now is -- and they are
24 well on the way of working on a charge in the case,
25 which are the instructions I give you.

1 Basically, as I told you, the charge will
2 give you some definitions to assist you, present the
3 law to you and allow you to focus on those and review
4 that charge as you commence or attend to your
5 deliberations. We have come a long way in getting
6 that prepared. We are not quite ready yet for it.
7 I'm not quite sure how long it will take us but I am
8 comfortable, I think we can have this done by the time
9 I get you back. And we are going to break for lunch
10 at this time. We will break for lunch, and I am sure
11 you will be back by 12:30 and you may be in there and
12 having a social conversation for another 30 minutes or
13 so. I think by 1:00, I think, we will be ready to
14 charge you and hear the attorneys' arguments and let
15 you commence your deliberations.

16 Remember you are not at liberty at this
17 time to commence deliberations until I give you that
18 specific instruction to do so.

19 So we stand in recess until not exactly
20 but I would think 12:30 or 1:00 and summon you back in
21 the courtroom and read the charge to you. Have a good
22 lunch and see you back in a little bit. We stand in
23 recess.

24 (Recess taken.)

25 THE COURT: Let the record reflect that

1 the State is present and the defense and the defendant
2 is present and the jury is not. And that we are now
3 prepared to discuss the charge.

4 With the proposed charge that is now
5 before me, Mr. Vinson, what says the State?

6 MR. VINSON: The State has no objections
7 to the charge as prepared.

8 THE COURT: Mr. Odom.

9 MR. ODOM: Yes, Your Honor. I have a
10 number of requests and/or objections to the charge.
11 And I hope that I will be able to go in order but I
12 will, at least, start off, and I may have to flip back
13 through parts of the charge.

14 The first request I have is that the
15 charge include an accomplice witness charge similar to
16 the one we have for Estrella Martinez. That I believe
17 the evidence shows that we should be entitled to a
18 similar charge for Tony Ramirez. I believe the
19 evidence shows that there is reasonable evidence for a
20 jury to determine that he is an accomplice based on
21 the fact that he testified that he was being told by
22 persons that it was illegal to make a silencer. That
23 he said he went to a restaurant and was told that,
24 according to his testimony, it will be involved in a
25 robbery of a jeweler and that this would be the

1 different parties had different roles. It would be
2 his job to keep diamonds, and it would be Jose
3 Albert's job to shoot the jeweler. And it would be
4 Ray Dennes's job to get the video machine from
5 downstairs.

6 I believe that the evidence then showed
7 that he left to Ecuador because he had previously,
8 prior to this, bought a plane ticket. And that he
9 took that trip, and he came back after the offense in
10 question occurred. And then he made certain attempts
11 to retrieve evidence. And it was after that he went
12 through an unanimous person to seek an award and/or to
13 talk to the authorities. And I believe there is
14 sufficient evidence for him to be an accomplice as
15 such, and I believe we would be entitled to a charge
16 therein.

17 THE COURT: That will be denied.

18 MR. ODOM: The second issue I would like
19 to raise the issue, as it relates to the parties, and
20 there is a number of places in the charge wherein the
21 Court has charged the concept of parties. And I would
22 object to the charge of parties in that I believe the
23 State has not produced enough evidence to show that
24 Jose Albert Dennes committed the murder of the
25 complainant in this particular case. And, as such, if

1 there is not sufficient evidence to establish that as
2 a matter of course, then it is the State's theory that
3 the defendant committed the murder of Janos Szucs.
4 And if that is the case, by charging under parties,
5 then the State has in effect broaden its burden of
6 proof than what it is able to prove. It sort of makes
7 it all encompassing, and if you don't find that the
8 defendant committed this particular robbery, then
9 maybe you can find that it is he who was involved in
10 it under a parties concept and, therefore, he
11 committed a robbery. And I don't think there is
12 sufficient evidence to show that there would be
13 another party, with the only one there could be based
14 upon Jose Albert Dennes. And I don't think the
15 evidence is sufficient in that regard to support a
16 parties charge.

17 THE COURT: That will be denied.

18 MR. ODOM: I have an objection to the
19 charge in regards to the general definition of
20 intentionally and knowingly. I believe the charge
21 says "a person acts intentionally, or with intent,
22 with respect to the nature of his conduct or to the
23 result of his conduct when it is conscious objective
24 or desire to engage in the conduct or to cause the
25 result."

1 And I believe that's the general
2 definition charge under the Penal Code of 6.03 section
3 A and section B. I believe that murder is a -- that
4 the Penal Code's definition refers to two specific
5 types of conduct that can be engaged in, and I believe
6 that, under this offense, the type of offense that is
7 alleged is a result oriented type offense, that is, he
8 consciously engaged in that conduct and, as such, it's
9 an inappropriate definition of intentionally and
10 knowingly.

11 THE COURT: That will be denied.

12 MR. ODOM: I object to the portion of the
13 jury charge that defines the extraneous offenses in
14 that it charges the jury on extraneous offenses in
15 that it says "that the evidence may be admitted for
16 purposes of considering motive, opportunity, intent,
17 preparation, plan, knowledge, and identity of the
18 defendant, if any, in connection with the offense."

19 And I would contend that, based upon the
20 evidence, we presently have that the extraneous
21 offense, which would be the shooting of Mr. Copeland,
22 would only apply to an intent, preparation, plan and
23 knowledge, knowledge and identity. It would not have
24 anything to do with of determining motive or
25 opportunity.

1 THE COURT: That will be denied.

2 MR. ODOM: I object to the definition of
3 beyond a reasonable doubt in that Gessa G-e-s-s-a
4 defination that the Court uses, which has been adopted
5 in this state, contains in it elements of two
6 different definitions of beyond a reasonable doubt.
7 In one paragraph, it defines reasonable doubt as "the
8 kind that would make a reasonable person hesitate to
9 act in the most important of his own affairs." And
10 the second paragraph it says "must be proof of such a
11 convincing character that you would be willing to rely
12 and act upon it without hesitation in the most
13 important of your own affairs."

14 I feel that those two definitions, with
15 one being a positive and one being a negative, are in
16 contradiction of each other and, as such, would be
17 conflicting with each other.

18 THE COURT: Denied.

19 MR. ODOM: I object to the Gessa
20 definition of beyond a reasonable doubt and I submit
21 there should no beyond a reasonable doubt consistent
22 with the prior before State versus Gessa.

23 THE COURT: That will be denied.

24 MR. ODOM: And finally I object to the
25 final paragraph in the instructions of the Court to

1 the jury for the second to last paragraph wherein it
2 states "your sole duty at this time is to determine
3 guilt or innocence of the defendant under the
4 indictment in this cause and restrict your
5 deliberations solely to the issue of guilt or
6 innocence of the defendant."

7 I would contend that the part of the Code
8 of Criminal Procedure that refers to the guilt or
9 innocence is referring to two sections of the
10 bifurcated proceeding, one that we generally call
11 guilt or innocence. The one called punishment,
12 however, that is in direct conflict with the standard
13 of proof, which is beyond a reasonable doubt. I think
14 the charge should read your sole duty at this time is
15 to determine whether or not the State has proved the
16 guilt of the defendant beyond a reasonable doubt, and
17 it has nothing to do with whether or not the defendant
18 is innocent of the charge as such.

19 THE COURT: That will be denied.

20 MR. ODOM: That is all I have.

21 THE COURT: Thank you.

22 Let me ask you to turn to page five. It's
23 extraneous offense paragraph. I don't recall any
24 extraneous offense.

25 MR. ODOM: I believe the extraneous would

1 be the shooting of Copeland.

2 THE COURT: That's the one.

3 MR. VINSON: Yes, Your Honor. What we did
4 on the request of defendant's counsel -- meant to
5 bring it to the the Court's attention -- to accident
6 and mistake and he ask that to be removed and we
7 agreed to take accident and mistake out and it now
8 reads "motive, opportunity, intent, preparation plan,
9 knowledge, identity or absence of mistake or accident
10 of the defendant, if any."

11 MR. ODOM: That's correct, they did.

12 THE COURT: Okay. You have asked for an
13 hour each and that's two hours of closing arguments.
14 I realize this is a capital case but I'm going to
15 shave some off that and I will give you each 50
16 minutes, 50 minutes each, and hold you right to the
17 line and don't embarrass yourself by having me to ask
18 you to sit down. And I will be glad to tell you when
19 five minutes is up or two minutes is up, or whatever,
20 but I am going to hold you to 50 minutes. And I
21 guarantee that you are over and I'll have to say
22 something. Okay 50 minutes.

23 If ready, bring the jury out.

24 (Jury came into the courtroom.)

25 THE COURT: Please be seated, ladies and

1 gentlemen.

2 All right, ladies and gentlemen of the
3 jury, we now have a charge prepared, and I am prepared
4 at this time to read that charge to you. Again, as I
5 told you earlier, it contains the law in this case,
6 various definitions to assist you, if they do, in your
7 deliberations. Once the charge is read, the attorneys
8 will have an opportunity to argue the evidence to you.
9 I remind you that nothing that the attorneys say is to
10 be considered evidence. It's their interpretation of
11 the evidence, their opinion. Your interpretation of
12 the evidence is what counts.

13 So again, nothing they say can be used by
14 you as evidence in this case. You have now heard all
15 the evidence. Once you commence your deliberations,
16 there will be very limited contact with you.

17 Let me also further explain that many
18 times, in cases, I will receive notes from the foreman
19 of the jury asking for this or that or whatever. Most
20 of the time I cannot respond to you. I am very
21 limited with the contact I can have with you during
22 your deliberation. And if you ask a question and you
23 get back from me "refer to your charge and I can't
24 legally answer your question," and things you do ask
25 are actually in the charge. So if I can answer the

1 question, I will be happy to do so.

2 But as far as testimony, you cannot ask
3 for any testimony to be read back to you unless it is
4 extremely limited, if there is a specific dispute
5 among the jury as to what somebody said. You can't
6 have testimony read back because you want to refresh
7 your memory, and I will give you further instructions
8 sir that, if that comes up.

9 Let me commence by reading the charge to
10 you and, then, we will have deliberation -- I mean the
11 arguments of the counsel and commence your
12 deliberations this afternoon.

13 (Judge read the charge to the jury.)

14 THE COURT: Ladies and gentlemen, to the
15 charge is a one page verdict sheet. That verdict
16 sheet as the following option.

17 (Judge read the verdicts to the jury.)

18 (Whereupon, the following proceedings were
19 held before the Bench.)

20 MR. ODOM: I forgot to object to something
21 that just occurred to me. I meant also to object to
22 the fact that we don't have a lesser included offense
23 for the offense of robbery as opposed to the capital
24 murder in the charge. I request as well.

25 THE COURT: Okay.

1 MR. ODOM: Well, it just occurred to me as
2 you were reading the charge. I can't sit through.

3 THE COURT: Well, I denied it.

4 MR. ODOM: Perhaps it is but it just
5 occurred to me.

6 (Whereupon, the following proceedings were
7 held before the jury.)

8 THE COURT: Who is going to argue first?

9 MR. SMYTH: May I proceed?

10 THE COURT: You may.

11 MR. SMYTH: Ladies and gentlemen, I have
12 got about 25 minutes to discuss this case with. It's
13 now eight minutes of 2:00. If I don't use all that
14 time, I will give the remainder to my partner here,
15 Mr. Vinson.

16 First of all, I would like to thank you,
17 each and everyone of you, for your attention in this
18 case. When we talked to you on voir dire 38 days ago
19 and, well, we missed it. Now it's into the ninth day.

20 Don't hold it against anyone. We tried. We know
21 the importance of it and we brought you a lot of
22 evidence. We didn't waste a lot of your time, and I
23 think it was brought to you in as efficient a manner
24 as possible.

25 I would also like to thank Mr. Copeland

1 for being here, Mrs. Szucs for being here and the
2 friends and family. We hope that this summation of
3 the evidence will help you out.

4 As the Judge said, this is the law that
5 governs you and the evidence is what you say it is. I
6 will tell you what I believe the evidence is, as I saw
7 it. If there is any disagreement with it, you will
8 rely on your memories and 12 of you, I'm planning
9 stragedy and the next witness out and concentrating on
10 the evidence. You are going to recall, the 12 of you
11 together, will recall better than perhaps I did. But
12 I do want to discuss it with you and help you. I
13 think you will come to a conclusion in this case.

14 First of all, let me talk to the charge.
15 This is not a terribly complicated charge. It's all
16 the law you need to know to come to a verdict in this
17 case. The first two pages are definitions. They are
18 pretty simple definitions. The next page, we kind of
19 get into there and we talk about the law of parties.

20 Each and every one of you knows the law of
21 parties. You remember the examples we gave dealing
22 with aggravated robbery and you had the gunman and the
23 guy holding the gun and get-away driver. That's what
24 we are talking about, the law of parties, which was
25 each role there. This law of parties and if somebody

1 had a role in the commission of this offense, they are
2 a party. If somebody opened the back door and with
3 intent that this act be done, the act that was done,
4 then they would be a party to the offense. If someone
5 carried a bag upstairs, if someone was present and put
6 jewels in the bag, they would be a party. If someone
7 was present and did the shooting, they would also be a
8 party. They are all guilty of capital murder if you
9 find they were a party to that offense. That's what
10 the law of parties is. A lot of language, but it's
11 pretty simple.

12 I think of each and everyone knows how the
13 law of parties works and knows how it applies to a
14 fact situation. And it will be applied in this case
15 based upon the evidence you heard.

16 There is also an application paragraph.
17 In fact, there is two of them. And the first one
18 talks about if Reinaldo Dennes didn't actually do the
19 shooting, is he still a party and he was there and
20 involved, aiding and soliciting, encouraging his
21 brother Albert Dennes in doing the shooting up in that
22 room. And if he was under the law of parties, he is
23 just as guilty of capital murder as if he pulled the
24 trigger himself.

25 And the second application deals with the

1 law that Reinaldo pulled the trigger. If you believe
2 the evidence beyond a reasonable doubt that he did,
3 based on everything you heard in the case, regarding
4 all of the case that he is the one that did it, that
5 nobody else did it, then otherwise guilty of the
6 offense of capital murder.

7 In this application, it simply helps you
8 go through it and logically, step by step, and
9 determine whether or not the State has convinced you
10 beyond a reasonable doubt.

11 You also get an instruction being the one
12 that is called the extraneous offenses, about the
13 fifth page. And that's the one where it talks about
14 if there is another offense presented to you during
15 the testimony regarding the capital murder of the
16 Janos Szucs, then you look at that evidence to help
17 you to return whether there is motive, opportunity,
18 intent, preparation, or knowledge or identity and that
19 deals with Copeland, the shooting of David Copeland,
20 as the security guard. You look at that and determine
21 does that shooting help you find out whether the
22 defendant was involved in some plan.

23 You heard all the evidence regarding the
24 plan, the language. "If you don't distract the
25 security guard, I am going to have to shoot." That

1 can all help you in determining whether this defendant
2 was part of the capital murder of Johnny Szucs.

3 The next page talks about the accomplice.
4 And it tells you that you cannot convict the defendant
5 based solely upon the accomplice testimony, that is,
6 the testimony of Estrella Martinez. It doesn't say
7 disregard her testimony and you look at her testimony
8 and decide whether or not that testimony has been
9 corroborated in any manner and you heard it suggested
10 to you that how do you know Reinaldo's phone records
11 of all those days and have been introduced to you, and
12 which is in evidence, and you can take them back, 1
13 through 166 A and 172 and go through the actual
14 records and cross reference and determine this is
15 exactly what you heard and saw as this document is
16 produced, then you can essential do that.

17 It was made right before your eyes, made
18 with the sole purpose to simplify the evidence and
19 make it logical, to take the evidence from all the
20 records plus the evidence from these other documents
21 and put it in one form that it is easy for you folks
22 to read and determine.

23 And I suggest that this evidence alone
24 corroborates what Estrella Martinez told you happened
25 in that case. It also corroborates even though there

1 is no requirement what Tony Ramirez, the man that made
2 the silencer, said and I will go over this in a little
3 bit more on down the road.

4 Other things that it will corroborate:
5 The testimony would be the silencer diagram of Tony
6 Ramirez, what he do, how he had to figure out how to
7 mount a silencer to that .9 mm demo gun that we showed
8 you. It was found in Reinaldo Dennes' office when the
9 search warrant was run. The Taurus handbook that
10 deals with the Taurus weapon, the one with the
11 extended barrel, the demo gun that was shown to you
12 found in Reinaldo Dennes' when the search warrant was
13 run as well as the fired bullet that is in evidence
14 that was found in Reinaldo's office. Those are all
15 things that corroborate what various witnesses said,
16 and it will be up to you to determine whether or not
17 that is sufficient for you to find the defendant
18 guilty beyond a reasonable doubt.

19 My job at this point is to try to refresh
20 your memory regarding the testimony that you heard
21 because it was a long time ago. It was eight days
22 ago. And like I say, eight and a half days ago. Lots
23 has been thrown out at you and I'll try to sort it
24 out. You recall it the way you folks recall it.

25 As you remember, the first witness was

1 Officer Terry, who talked to you about being
2 dispatched to the scene and got there real quick and
3 secured the scene until an investigator came over

4 The next person is J. L. Kay. He was the
5 crime scene unit, the CSU. That CSU crime scene unit
6 that came in and took all the pictures in the lobby
7 area where David Copeland was shot, collected the
8 bullets and spent cartridge cases, those type of
9 things.

10 The next one was David Copeland, the
11 security guard, the new man on the block, been there
12 only three days, didn't know nobody. He kind of threw
13 a monkey wrench in the plans of the defendant to carry
14 out this robbery. And he was the new guy. And he
15 wasn't able to be distracted as he wanted.

16 But you heard from David Copeland, and it
17 probably showed, chilled each and every one to the
18 bone, how he was distracted.

19 When he came around the corner, he
20 observed somebody behind, working with the video. He
21 thought it was a technician. And the person got up
22 and was leaving. He wasn't going to stop him and get
23 that person for whatever reason. The reason: He had
24 the job of getting the videotape and that person
25 getting the defendant, Reinalde Dennes, come back,

1 walking back with something behind his back. And you
2 know what that something is. It was a semiautomatic
3 .9 mm with a silencer attached. "I got something I
4 want to show you."

5 It is just fired one time. Mr. Copeland
6 spins and goes to the floor and, on his back, when
7 Reinaldo Dennes walks up one more time. And you know
8 that bullet went through and out his chest and struck
9 the bone and shattered out of his coat and recovered
10 by the CSU. We also have another bullet went and hit
11 -- the other bullet -- the elevator plate and
12 mushroomed and was found intact as well as one spent
13 casing. We don't know what happened to that spent
14 casing. It could have been got kicked somewhere over
15 the lobby, could have been inside the overalls worn by
16 Reinaldo. We don't know. Maybe he stopped and picked
17 it up. Who knows, but one case.

18 The next witness is, I think, Mr.
19 Copeland, I don't have to remind you, said that it was
20 very chilling. You heard it all. It caught your
21 attention.

22 The next witness was Antonio Ramirez, Tony
23 Ramirez. He was the man that came in and spoke, with
24 the accent, through the interpreter, how he came to
25 meet Reinaldo and his brother Alberto and Francisco

1 Rojas, how he worked in the office and making besels
2 for watches, how he was recruited to make some
3 silencer.

4 He told you about how they ordered the
5 silencer books. We got the telephone records. The
6 calls were made to this company off of the phone that
7 is in Reinaldo's office. You can look on page three,
8 if you don't believe me, if you don't believe the
9 records, here is the phone number, right there, to the
10 company. That is in the cellular records that we
11 produced for you. It's also in the telephone records
12 that came from Southwestern Bell.

13 He got the silencer books. They weren't
14 of any use to him. And he went ahead and finished the
15 silencer without it. You got these, are the silencer,
16 the various generations that they went through and now
17 in evidence as State's Exhibit, substituted for the
18 diagram.

19 But Ramirez went on to tell you things
20 much more disturbing than making the silencer and
21 testing. You know from all the evidence, I don't
22 think there is a doubt in anybody's mind, that the
23 Greenrich Building is here and the test silencer here
24 and Reinaldo's apartment is right here, all within
25 walking distance of each other. How convenient.

1 You know, it's very clear. What we have
2 got, you can put it altogether, if you don't remember
3 that testimony, and you know that evidence was found
4 at all those locations.

5 But Ramirez tells you more than making the
6 silencer. He tells you about going to dinner with the
7 defendant, Reinaldo Dennes, and his brother, Jose
8 Alberto Dennes, and how the talk turns around to the
9 proposition about how you can get rich. A proposition
10 about how they are going to rob a jeweler in the
11 building and a proposition about how, "Tony, your job
12 will be to get the diamonds and Alberto's job will be
13 to shoot the jeweler and my job" -- my job -- my,
14 being Reinaldo Dennes, "will be to get the
15 videotapes."

16 Those videotapes were paramount in
17 everything that this man did. He wanted the
18 videotapes. He figured without those videotapes, they
19 can't get me. It was very important for him to get
20 the videotapes, even when he is walking out of the
21 building and turns around and comes back and shoots
22 David Copeland to get those. It's only by the Grace
23 of God that David Copeland is here today. There is
24 not a thing that this man did that allowed Mr.
25 Copeland to come in and testify from the stand. You

1 know the plan is developing. We brought you more.

2 We brought Todd Miller, who told about the
3 lineup after his cronny was arrested, along with how
4 they went through the lineup and told you the steps
5 they went, to make it, to allow David Copeland to pick
6 or not. You know, according to David Copeland, yeah
7 number five, thought, oh, number five. Again, you
8 heard about number five and thinking the State, the
9 government, was trying to frame this man by putting
10 him in the number five spot. You now know, even if
11 you don't believe anything else, that the attorney
12 Ellis McCullough. You know that Ellis McCullough
13 choose the spot for him, his spot, not the police, and
14 the spot was number five.

15 And Copeland says the closest to the guy
16 that shot me was the number five person, if he had a
17 mustache and glasses. They weren't to hear from Todd
18 Miller exactly what else he said but Copeland told you
19 how he decided that would have been him if he had the
20 glasses and the mustache.

21 And you also heard about how Copeland had
22 him put together. He has been shot two days before
23 and very critical and in the chest and in the back and
24 the police -- and as insensitive as it may be to send
25 the sketch artist to have him recreate who it is who

1 shot him and he did the best job he could, and I think
2 it is remarkable.

3 And I think it is very remarkable and very
4 telling that David Copeland is not unsure of his
5 identity, as some would like to see, when he does the
6 artist's rendition, it's not a photograph. This is
7 not a photograph of the person. This is not off the
8 videotape that Reinaldo Dennes stole. This is out of
9 the man's eye of David Copeland, trying to relate to
10 another person and have them bought and they did
11 that. And it is absolutely remarkable how close he is
12 to that. If that doesn't convince you, I don't know
13 what else will. In split seconds, he found a picture
14 of his killer that he was able to relate to and it
15 could be anybody, any of a hundred people in the
16 world, a thousand or million but look how close he got
17 to him. And all those other people that could
18 possibly, not possibly, were not in Greenrich Building
19 that night and didn't see the shooting. Mr. Copeland
20 knows what he saw and he related, as best he could,
21 and I think it is very remarkable how close he came.

22 When you do, as Copeland says, put the
23 glasses on and put a mustache on this particular thing
24 and give him a full head of hair, who is it?
25 Reinaldo Dennes.

1 Ladies and gentlemen of the jury, the
2 State does not stop with that. We want to bring you
3 everything we possibly can and we can get admitted in
4 court. You get to the second scene and Lois Gibson
5 you saw her reproduce.

6 We brought you Estrella Martinez. This
7 document the Judge has given in the charge is an
8 accomplice so her testimony has to be corroborated but
9 Estrella you an entire case. She led you, came to be,
10 and nobody knew until Estrella came forward, after she
11 had been in jail for a couple of months, and after
12 fear of this defendant caused her to go to her lawyer
13 and have her lawyer come to the State of Texas and
14 said, "I want to tell you what happened to myself and
15 my child. I want to tell you what happened."

16 And she came in here, and she told you
17 what happened. And because of what she told you, you
18 have all these phone records. And you can see exactly
19 what she told you has proven out to be true. She came
20 in and told you how that Reinaldo recruited her. And
21 he came to her in November, December, begun to romance
22 her. She is a single mother. He is a nice-looking
23 man, married man, but he is still nice-looking because
24 he said he will divorce his wife and wants to be with
25 her and take care of her and her child.

1 And she has a five dollar an hour maid
2 job. It's rough going for her. She loved to be
3 married to a man who would do what he said he was
4 going to do: Take care of her. He wasn't going to
5 take care of her. He intended to use her and he used
6 her. He used her for his own personal satisfaction
7 and used her for the greed that is inside, that is, to
8 get her to help him get in the building.

9 You heard about all the security
10 precautions, and you heard about it's not easy.
11 There is only one way to get in the building without
12 being seen and through that loading dock door into the
13 back and up the stairwell. And you are in and nobody
14 sees you unless you get picked up on the camera.

15 You wonder what Copeland sees on the
16 camera. He sees people. He's new in the building.
17 If he had seen two guys in suits but the defendant and
18 his brother Alberto, walking with a briefcase, it
19 wouldn't attracted attention because the people in the
20 building wear suits, like other businessmen, and he
21 wouldn't have known them because they hadn't been in
22 the building the entire time he had been there. No
23 way. Estrella said they weren't around the building
24 those three days prior to the incident. But he's up
25 on the floor but he still thinks that he has got to

1 get the videotape so they go to the seventh floor and
2 do their deed. And we will talk about that more.

3 But you know the plan is she distracts
4 Copeland and let's him in the back door. And she gets
5 the phone call on the cell phone that the defendant
6 had just gotten two days before, on that Monday,
7 January 22nd. This is the cell phone Estrella
8 Martinez used, this cell phone and to their apartment.
9 And you know it's the cell phone she used.

10 She told you the cell phone I had, the
11 first call I ever made with it after we got it and
12 playing around with it, I called my friend Sonya, who
13 is married to Cepada, and there it is. The cell phone
14 goes into operation for Monday, January 22nd. She
15 makes a phone call. And I kept this phone and I kept
16 this telephone all the way to Thursday, the 25th of
17 January. I used it to call Francisco Santos Rojas
18 about 2:30, and he met me and I gave it back to him
19 and he gave me \$5000. It's the phone that was used by
20 her that day.

21 But in addition, the plan was she was
22 suppose to be distracting. She was suppose to be the
23 one that got the security guard away from his desk so
24 that the defendant could get those tapes he wanted so
25 badly. She did it. She did it once. And Copeland

1 left the floor a number of times, looking for the head
2 of the security, so she is not watching one time. "I
3 left to go up to the fifth floor to get some keys for
4 cleaning ladies, get keys that she locked in the
5 office."

6 And Estrella told you that this was first
7 a ruse, the first time she got him distracted. And
8 she thought it was all over. Then she gets another
9 phone call and that other phone call -- and I don't
10 have time and I know you don't want me to go through
11 every one of these phone calls, day by day, but she
12 got the other phone call.

13 THE COURT: Five minutes.

14 MR. SMYTH: She had to go back to the
15 security guard and distract him again. Why did she do
16 it? She argued she didn't want to do it but the
17 defendant told her, "You don't distract him, I am
18 going to have to shoot him. If you don't distract, I
19 am going to have to shoot him."

20 And here it is. You can look at these
21 records and see how, in two days, a series of phone
22 calls, including phone calls to Johnny's office at
23 713-784-1196 the next night. And the deal is called
24 off and Johnny can't be called. Look at January 24th.
25 This is like Estrella told you.

1 You get down to the phone call that she
2 gets from Reinaldo Dennes at 8:33, 6:33, just like she
3 said, between 6:00 and 6:30. She missed it by three
4 minutes. Ray calls Estrella and gets in the back door
5 and she says about 30 minutes later called again. And
6 this is at 9:22. He calls her again at 20-some
7 minutes. And she does the first round of locking the
8 keys up.

9 And then you get the final one down here,
10 30 minutes after that approximately, she is called.
11 There was a call back between them where she has to go
12 distract the guard again and leave that phone line
13 open for ten minutes. That certainly corroborates
14 everything she told us.

15 One last thing I want to talk about before
16 I sit down is the evidence that the State presented
17 regarding the bullets. This evidence will be phew
18 phew as nothing but I think it's pretty good evidence.
19 You decide for yourself.

20 You remember Robert Baldwin, what is the
21 battle of the experts. Robert Baldwin told you that
22 he was able to match these things. Their expert said
23 it couldn't be done. We will talk about that in a
24 minute. Baldwin was able to match the bullets, no
25 question that the cartridges all came from the same

1 gun. Both experts agree on that. Baldwin was able to
2 match bullets off of the shooting scene and matched
3 the security guard Copeland with the bullets that came
4 out of Johnny's body with the bullet that came out of
5 Reinaldo Dennes' office. Pretty good evidence. He
6 matched it and he told you how he did it.

7 Everything he did suggested that might
8 have been improper on his part, such as a minimum
9 number of identifiers that you have to have or didn't
10 photograph your bullets. You know, that's not the way
11 it is done, and I think it is telling. And you decide
12 for yourself what you want to believe about Richard
13 Ernest. You decide for Ernest whether or not you
14 believe Richard Ernest, a guy who comes down from
15 Tarrant County and takes time off from the medical
16 examiner's to come and testify in this case.

17 He tells you that he went there and he was
18 in that office for a grand total of two hours or less
19 to identify. He had nine bullets or bullet fragments
20 and four cartridges. And he compared everything with
21 each other, and he compared all the bullets with each
22 other all in less than two hours and hit the door,
23 greeting and glad handing. He sat down and examined
24 each one and made his finding and he made his notes
25 all at the same time.

1 And he got up there and on the stand and
2 was saying, "I cannot match these bullets to each
3 other but I can't eliminate them."

4 What he has told you, "I cannot match
5 them. I wouldn't give you an opinion that they are
6 matches. These bullets will all match, but I'm not
7 going to say that they weren't fired from the same
8 gun."

9 He wasn't going to go that far on that.
10 And we talked about that.

11 And there's a couple of things to me that
12 leads me to question his sincerity in his testimony
13 that is a souvenir bullet. Where did you first hear
14 that? We haven't talked about a souvenir. Mr. Odom,
15 where did you first hear this word "souvenir" and
16 Wendell Odom that he was talking to Dr. Brown and did
17 you find a souvenir bullet that indicated that Johnny
18 had been shot on another occasion. And Dr. Brown said
19 no and he didn't.

20 THE COURT: One minute.

21 MR. SMYTH: The bullet that Mr. Ernest was
22 requested to examine and theorize, that theory that it
23 might have come from the bullet that passed through
24 the body. He jumped at that conclusion.

25 The second thing that interests me about

1 his testimony is what je told you about his bullets
2 showed but I don't remember if I recall exactly. He
3 had on his notes he wrote, "no match here, no match
4 here," and I think no match here with regard to EB
5 one, two, and five but conspicuously absent from his
6 notes was any reference about whether six, seven, and
7 nine could be matched. It wasn't in his notes.

8 Now, don't you know if six, seven, and
9 nine could not be matched, there would have been those
10 same kind of notations. But he wants you to believe
11 that it so obliterated the lands and grooves, the
12 impressions are so obliterated, that it's not possible
13 to match.

14 Ladies and gentlemen, I would judge that
15 testimony very skeptical, if a man that did all this
16 examination in under two hours, and that's including
17 glad handing and greeting everybody and how much time
18 did he really spend looking at that evidence.

19 Ladies and gentlemen, my time is up and I
20 don't want to take time away from Mr. Vinson. I am
21 going to sit down and defense counsel will have a
22 chance to talk to you and tell you their
23 interpretation of the evidence. Again, I want to
24 thank you for your patience and thank you for the
25 attention you have given us now. Thank you on behalf

1 of Nicole Scuzs.

2 THE COURT: Mr. Odom.

3 MR. ODOM: Ladies and gentlemen, I, too,
4 want to thank you. This has been a long and hard
5 case, at least it has for me. You have to bear with
6 me. I know you have heard from me for almost two
7 weeks now plus you also were subjected to me asking
8 you questions on voir dire. And from my end of me,
9 there's only one of me, so you are tired of hearing me
10 speak. You don't get any break. It is just me on
11 this end of it.

12 And I have to be quite candid with you and
13 tell you closing arguments are not my forte, so I
14 probably will not be as eloquent as Mr. Vinson or Mr.
15 Smyth. That is, however, not to say what I have to
16 say is any less important or that the points that I
17 raise that I am going to talk to you about are not
18 significant.

19 If I have done something that offends you
20 through this trial -- and I say this with all
21 sincerity -- hold that against me. It is a very
22 difficult job to sit here by myself and opposite the
23 State, although I do have little Lee. She has
24 certainly been here with me, to try to think of all of
25 the issues that are constantly being thrown at me at

1 the same time.

2 And if I made an objection that you all
3 thought was improper or I attacked a witness you felt
4 was done away that you felt was inappropriate, then,
5 by all means, tell me about it after this case is
6 over. Talk to me about it in person. But whatever
7 you do, don't hold it against my client for something
8 that I may have done that you noticed.

9 I told most of you in voir dire that this
10 is an adversary proceeding, and if you haven't seen
11 anything, you have seen that. This is an adversary
12 proceeding and you saw a good adversary proceeding,
13 too, and these guys were good. And they have a theory
14 of their case and they are going to push their theory
15 of their case. And I told you, up front, on voir dire
16 that I did, too, have a theory of the case and I am
17 going to push it strong and I am going to push it
18 hard. And I'm not going to stretch your credibility
19 or ask you to believe things that can't be believed.

20 My theory of my case from the very
21 beginning of this and right now and still my theory of
22 the case is this: You know, they may have presented
23 some evidence about some type of conspiracy, and they
24 may have talked to you. And if you believe Mr.
25 Copeland beyond a reasonable doubt and Miss Scarlett

1 (sic) beyond a reasonable doubt, you have got some
2 evidence before you of Mr. Copeland, David Copeland,
3 and we talked about that.

4 But what they haven't presented to you is
5 what they charged this man with. They charged the man
6 not with shooting David Copeland. You don't have an
7 indictment in front of you as far as shooting David
8 Copeland. What they charged the man with is having
9 murdered Janos Szucs, the complaining witness. And,
10 ladies and gentlemen, where is the evidence that
11 proves to you beyond a reasonable doubt that Ray
12 Dennes was up on the seventh floor and that he shot
13 Janos Szucs to death? It's not there. And that's my
14 theory, and that's what I have contended all along.

15 Now, ladies and gentlemen, the State wants
16 to kind of broaden that by saying maybe, maybe someone
17 else did it. Maybe Jose Albert Dennes did it or maybe
18 someone else was let in that door did it; however,
19 they have to prove to you beyond a reasonable doubt
20 that Ray Dennes was part of the murder, not the
21 robbery, not that he was part of getting the video
22 machine from the first floor or that if he was part of
23 shooting anyone else. They have to prove to you
24 beyond a reasonable doubt that Ray Dennes murdered
25 Janos Szucs or that he didn't, that he was so aiding

1 and so abetting -- that he wasn't aiding and abetting
2 in a robbery -- that he was aiding and abetting in the
3 murder of Janos Szucs.

4 Now, that's been up front all along, and
5 although you may think it's hard for me or it's hard
6 for you to think that, well, here I am questioning
7 lineup techniques, here I am questioning bullet
8 techniques but when you think about everything I have
9 done and everything I have done has been aimed in that
10 one category, in that one point, and, that is, do you
11 know beyond a reasonable doubt what happened on the
12 seventh floor?

13 Of course, you don't. I don't know what
14 happened up there on the seventh floor, and I know
15 that the State doesn't know what happened up there on
16 the seventh floor.

17 When you go back and look at the law in
18 the charge the Judge gives, you look at the
19 indictment. And you look real hard at that
20 indictment. And, ladies and gentlemen, if this man
21 were found not guilty today, this is nothing, nothing
22 that would keep the State from prosecuting that man
23 for the attempted murder of David Copeland. But
24 that's not what he is charged with.

25 The Judge charges you that before you

1 could find someone guilty, you have to have more than
2 what the State has or what the defense has. You have
3 to have more than a theory. It's easy for us to get
4 up here and tell you, hey, there is my theory of the
5 case. Hey, this is what I think the evidence shows.
6 It's easy for the State to get up. It's pretty hard
7 but we can say that.

8 We are not bound to the same standard the
9 Judge tells you they are bound to. And it's the same
10 standard we talked about in voir dire, when I talked
11 to you, and it's the same standard that each and every
12 one of you promised -- you promised -- me you could
13 follow as a matter of law. And that is "reasonable
14 doubt is a doubt based on reason and common sense
15 after an impartial consideration of all the evidence
16 in the case. It's the kind of doubt that would make a
17 reasonable person hesitate to act in the most
18 important of his own affairs," or to put it in another
19 way, "proof beyond a reasonable doubt, therefore, must
20 be proof of such a convincing character that you would
21 be willing to rely and act upon it without hesitation
22 in the most important of your own affairs." And the
23 doubt doesn't go to the extraneous offense. The doubt
24 goes to what the charge is and that is capital murder.

25 Let me talk generally about what I believe

1 the key issues in this case are. The State puts the
2 whole case on the following: Tony makes two
3 silencers. You haven't got the silencer. Notice how
4 they try to slide and say the one silencer and the
5 evidence before you is Tony makes two silencers. And
6 I will talk in more detail about that issue.

7 There was a bullet found in the
8 defendant's office, a bullet found in Ray Dennes's
9 office. Number three, the casings that are found in
10 the lobby matched the casings that are found out on
11 the site that Tony Ramirez takes the police to.

12 Number four, Estrella says that she gets
13 paid to let -- originally she says to let Ray and
14 Albert into the building and let some other guy in.
15 They are going to let some other people, some bad
16 guys, in the building. That's the next issue they
17 have. Estrella is paid to let them into the building.
18 Five, a silencer is used both on the guard and on
19 Janos Szucs.

20 Six, we have cellular phones -- and I'll
21 go in great detail on that -- but we have some
22 cellular phone records that are used. Seven, the
23 defendant, Mr. Dennes, leaves for Florida; and, eight,
24 the defendant, Mr. Dennes, knows Janos Szucs. That's
25 the key issues in their case.

1 Now, let me tell you the key issues in the
2 defense before I go into the details of the various
3 witnesses. Number one, once the State had a theory,
4 then everything that they did was geared, gathered and
5 calculated towards that theory. Once it is that Mr.
6 Ramirez told the police -- and you know how he came to
7 the police, asking for a reward under a unanimous name
8 -- once he talks to the police, then everything that
9 the police has done up to that point is sort of
10 dropped and everything starts to go in a different
11 direction. What do I mean by that?

12 You heard from Sergeant Waltman. You
13 heard from Officer Halling, and you heard from one of
14 the other officers about various investigations that
15 were on going. You even heard that there was a
16 tentative ID by the fellow named James Bogattas. We
17 sort of close that investigation but you didn't hear
18 anything about that investigation.

19 Now, why is it that the State has to prove
20 their case beyond a reasonable doubt? There's a lot
21 of reasons but one of them is this. I'm not a police
22 officer. I'm an officer of the court but I'm not a
23 police officer. I can sometimes subpoena people here
24 to court but I can't investigate a case like the
25 police department can. I can't have sketch artists on

1 call that can recreate and can take a photograph and
2 turn it into another photograph. I can't do that.
3 The State can. The State has the resources and the
4 investigative manpower to do things that I can't do.
5 But the investigation that was going and aimed towards
6 the people that tentatively ID that we know are
7 involved in this type of activity that we know were in
8 the general area at that time; by that, the Harris
9 County area, during January, we know that those type
10 of investigations we don't hear any more from them.

11 The State's theory changes completely from
12 whatever they were investigating to focus solely upon
13 Ray Dennes, and, ladies and gentlemen, this is the
14 type of thing that years from now people come around
15 and say what happened on that case. You know, there
16 may be new evidence or there may not be new evidence.

17 You find someone guilty beyond a
18 reasonable doubt because this cannot be a slipshod
19 conclusion on your part. This cannot be one of those
20 cases that, after the fact, we say, "Hey, we may have
21 gotten the wrong person." That question has to stop
22 here. All of those questions about whether it's the
23 wrong person or the right person has to stop here.
24 You are the ones that have to resolve that.

25 Why I do I say they support this theory of

1 the case to exclude all other theories? Well, I'll
2 tell you that some of the evidence shows that you had
3 State's Exhibit on the lineup. And you had a photo
4 spread on the lineup and I believe it was 33 and 34.
5 And State's Exhibit 33 and 34 you have this spread
6 and, on number five here, Mr. Copeland IDs a person
7 that we now know as a James Bogottus and we know now
8 is involved in the armed robbery of jewelry dealers.
9 And suddenly that identification goes from a tentative
10 ID to a no ID.

11 And what did you hear from Mr.
12 McCullough? Suddenly Mr. Copeland goes from a no ID
13 to a tentative ID and that's a very subtle thing. And
14 I'm not saying this is overt or outright or malicious
15 intent on anybody's part but I am saying this: In our
16 society, to prove our case, subtle distinctions are
17 made and investigations on one area get started real
18 hard on another area.

19 And you heard Ellis McCullough's
20 testimony. "Look, I didn't keep, I do mean one
21 thing. I sure thought it peculiar that what I heard
22 was no identification." This is the one that he is
23 the same height and the same weight, suddenly turns
24 into a tentative identification. And, then, that
25 tentative identification, by time we get to the

1 courtroom, is no longer a tentative identification.
2 Then Mr. Copeland knows that is the person that shot
3 him. The first time he knows it is when the person is
4 charged with capital murder and sitting at defense
5 table. He doesn't know it at the lineup. Those are
6 subtle things that support a theory of the case. They
7 may be subtle at the start but they are mischievous
8 and it's you, as a jury, have to view and view it in
9 light of beyond a reasonable doubt.

10 Mr. Ramirez: Mr. Ramirez says he's not
11 guilty of anything; therefore, the State is never
12 going to charge Mr. Ramirez of anything. Ladies and
13 gentlemen, when is it that someone confesses that they
14 make a silencer, whether there is physical evidence
15 that a silencer may be used, that the State says they
16 can't prosecute the persons because they can't find a
17 silencer? Remember when Rosenthal was saying that?
18 We can't prosecute him. There wasn't a silencer.

19 Does that mean we can't prosecute Ray
20 Dennes because we didn't find a gun?

21 What kind of craziness is that?

22 Tony Ramirez gets a free witness. And
23 Tony Ramirez, even though people were telling him it
24 is illegal, the people were saying at the shop what
25 you are doing is illegal. I had questions about it is

1 the way he puts.

2 Tony Ramirez builds two silencers and
3 here, according to the restaurant conversation, we
4 hear this the first time on the witness stand, they
5 talk about going in and shooting somebody. And, at
6 first, I thought he said, well, I went to Ecuador.
7 After hearing that, upon cross examination, do you
8 remember what he said? "I was going to Ecuador
9 anyway. I already bought my tickets and was already
10 to go."

11 He was so afraid and I believe that really
12 goes on and he calls Ray Dennes three times from
13 Ecuador, twice at the office and once at his home
14 because he has got some watches and he wants to bring
15 his watches. And he wanted to do business with
16 Reinaldo Dennes. That is completely inconsistent with
17 any theory that Reinaldo Dennes tells him, hey, let's
18 go shoot somebody and steals a million dollars worth
19 of diamonds and he's so afraid he flees to Ecuador?
20 It's inconsistent.

21 We heard from Estrella Martinez, says,
22 well, I'm told originally that Ray Dennes wants to
23 gets into that building because he needs to get a
24 video and then some of the earlier tapes. And on
25 cross, she finally says, "Yeah, he was going to let

1 some bad guys in." But we don't hear anything about
2 cellular phones until after Estrella Martinez has
3 already been debriefed twice but she is in jail.
4 She's not with her child and, then, when we start to
5 corroborate, what they called corroboration -- and
6 I'll talk about that corroboration in a minute -- but
7 how much corroboration do we really have?

8 You have been told that there is a phone
9 call to a fellow by the name of Cepada. Did you see
10 any proof that there was a phone call to the guy
11 Cepada? We had been told that phone call to the
12 Roadway Place. Do you see any proof of that phone
13 call made to Roadway Inc.

14 You were told that the latent print
15 examinations were put all over the cellular phone and
16 whose print did we ever come up with: Albert Dennes.
17 It is only corroboration if you believe Estrella's
18 story. The last time she told you, the last time she
19 tells you, not the first, not the second and not the
20 third, but the last time when her child is kept from
21 her because she is in custody.

22 The sketch manipulation, this is
23 wonderful. It's so wonderful that when I ask Ms.
24 Gibson, "Why didn't we do one of those Albert
25 Dennes?" Well, it wouldn't alike. Why didn't we do

1 one of James Boggotus? Well, it wouldn't what.

2 Ladies and gentlemen, I would like you to
3 look at this man. If you gave me these glasses, a
4 mustache and that kind of hair, I would look like him.
5 But they wouldn't make that demonstration for you even
6 after we pointed it out in cross examination. Yeah,
7 it looks just like him if you give him different
8 features. I would look like him, too, if you gave me
9 different features. That's not evidence of
10 identification beyond a reasonable doubt.

11 The bullets, Mr. Smyth makes a great deal
12 of the bullet issue by talking about Richard Ernest
13 spending a certain amount of time in the police
14 department. Now, what's the importance of the
15 bullets?

16 Here's the importance of the bullets. The
17 bullets is the only evidence that exists that ties
18 anyone up to Janos Szucs, EB five, six, and seven.
19 That's the only evidence we have. They put on Robert
20 Baldwin and they make it that fiat complete. That's
21 it. There is no question about it. These bullets
22 match. There's no room for a second thought. There's
23 no thought for another opinion. The bullets match.

24 So what do we do? I can't hire Robert
25 Baldwin. He's on the case. The Harris County people

1 are on the case in Harris County, so I do the same
2 thing that would happen if the case was in Fort Worth.
3 I have to go to the next examiner. If it's in Fort
4 Worth, I have to get Robert Baldwin and bring him up,
5 and if I did, the State proving their theory of their
6 case, well, they bring in someone from Harris County.

7 And you know what? He spends two hours,
8 even though they haven't told you how long Robert
9 Baldwin spent with them either. And you know what he
10 says? He says, "Well, they don't match," but his
11 notes are all that exact. Remember the fact that
12 Robert Baldwin had one and a half pages of notes.
13 That doesn't mean that Robert Baldwin's opinion is any
14 different. That doesn't mean that Richard Earnst's is
15 any different.

16 But something interesting came in in
17 Robert Baldwin's cross examination. You know what he
18 didn't know? Remember what he didn't know, that he
19 was surprised to learn, "You mean that the bullet went
20 through the steel wool?" "Well, yes."

21 His theory was I can look in the grooves
22 and all due respect to Robert Baldwin, he's an
23 excellent bullet examiner. You can see where he would
24 make this mistake. You got a bullet that has gone
25 through the silencer and scared up from the silencer

1 and he has got a bullet, .9 mm, and got a bullet that
2 is from the same manufacturer, that is, the gun that
3 was used was the same manufactured gun. It would be
4 very easy to jump to the conclusion, well, they match.

5 They both were fired through a silencer, not only a
6 .9mm and they are both one of those eight or nine
7 Beretta-type millimeter firearms.

8 But what you don't have is you don't have
9 his knowledge of silencers that Richard Ernest has.
10 You hear what Richard says, yeah, I have done lots of
11 experience with. Remember how Mr. Smyth, "I tried to
12 tell you, look, all the steel wool is gone." Do you
13 remember what his response was? Well, I don't know,
14 Mr. Smyth, I have shot them six or seven times through
15 there and it didn't change them.

16 The point is this: Richard Ernest could
17 not match them. And the big issue about, well, he
18 couldn't say they didn't match either. Of course, he
19 can't say they didn't match. If he can't match them,
20 then he can't say they didn't come from the firearm.
21 For the very same reason, the same surface is scared.
22 If you can't do one, you obviously can't do the other.
23 That's not a halfway saying in that regard.

24 The souvenir, I think Mr. Smyth missed the
25 issue on the souvenir. Did you ever hear Richard

1 Earnst say he never told me about the souvenir? The
2 point was he never gave an opinion that it was a
3 souvenir bullet. He asked me what I think the
4 evidence. He asked me what about this oxidated
5 bullet, and he came up here in the morning to look at
6 that bullet again and to determine why is this lead
7 core so different from the other lead cores. He never
8 gave an opinion that it was a souvenir bullet, but he
9 did give an opinion that this is something a lot
10 different from that lead core than the other fragments
11 of lead core that were found down in the lobby. And
12 that's the issue in regards to Richard Ernest.

13 Ladies and gentlemen, the seventh issue
14 that the State has is that there never were diamonds
15 found and there was never a gun found. Now, the State
16 will always say, well, they got away.

17 But the truth of the matter is, ladies and
18 gentlemen, despite the State having proved their
19 theory of the case would ask questions, did you check
20 Santo Domingo, did you check Tahiti, did you check
21 Bali, did you check anywhere else in the world in
22 their zeal to prove the case?

23 Did you hear any evidence, any evidence at
24 all, that Ray Dennes went anywhere other than
25 Florida? Well, yeah, you did. You heard in order to

1 get to Florida you had to go through Louisiana, and I
2 think we got some evidence that he was in Pensacola,
3 Florida. But don't let the lawyer ever -- and next,
4 well, did you check Santo Domingo, being mistaken for
5 any evidence anywhere in this case that you hadn't
6 seen or haven't heard from. The evidence is what you
7 heard.

8 The State has to prove that the person
9 went in and murdered Janos Szucs knew Janos Szucs. So
10 what they do is they establish a very natural act and
11 make it look like it's an unnatural act. They, on one
12 hand, establish the fact that Ray Dennes is doing work
13 for the complainant. They establish the fact that Ray
14 Dennes who would call the complainant's office and
15 then they say Louisiana. There is your proof. That's
16 it.

17 Ladies and gentlemen, that is just a
18 theory of the case and that's not proof beyond a
19 reasonable doubt. If it were, then everybody would
20 call that man the four days proceeding this offense.
21 You could say the same to everybody. If that were the
22 case, everybody who has ever worked for Janos Szucs or
23 did business with him those four days proceeding this
24 offense. Obviously, there would be corroboration or
25 they could be guilty of the offense.

1 No, you can't take a natural act, like a
2 phone call, or the fact that he is doing business with
3 Janos Szucs and say that convinces you beyond a
4 reasonable doubt that Reinaldo Dennes killed Janos
5 Szucs.

6 Estrella Martinez -- Estrella Martinez,
7 you kind of get her to go both ways. Number one, if
8 you believe her testimony, if you believe her
9 testimony, then listen to this. Ray tells me he is
10 going to come, into the building. And he wants to get
11 some videotapes. Ray tells me that there are some bad
12 guys that are coming into the building. Ray tells me
13 I am suppose to distract the guard so I distract. Ray
14 tells me again I got to distract the guard again. So
15 what do I do: I go up and get the guard and we go
16 down together and we go to the deli. Do you remember?
17 That's not what Mr. Copeland says but that's what
18 Estrella Martinez says, if you believe her.

19 Then Estrella, one of the most remarkable
20 things that has ever been heard and, that is, "I see
21 Ray Dennes walk down that hallway and I see his
22 mustache and I see him but I really don't see him."
23 Maybe it was the interpreter but I see him but here I
24 can recognize him from his walk. And I go to the
25 bathroom. He shoots Mr. Copeland twice, shoots him

1 down. I then get money from the man. He returns from
2 Florida and what do I do? I go and sleep with him and
3 talk about how, "What a great deal. You have got to
4 disguise yourself better."

5 Then, when I get arrested and when that
6 man gets arrested and is put in custody, I'm afraid of
7 him. I become afraid of him. Boy, what kind of sense
8 does that make?

9 According to her testimony, she sees him
10 gun down a man almost but she is not afraid of him.
11 She only becomes afraid of him when she is afraid for
12 her child. And, ladies and gentlemen, what she is
13 afraid of is not Ray Dennes but what she is afraid of
14 is the State, because the State can keep her away from
15 the child, so what does she do. She cops a deal. The
16 deal is that she goes scot free. And don't buy any of
17 their stuff she is on the probation because she is not
18 on probation. Through a piece of paper, she is on
19 probation but where is she? She is being deported
20 back to Mexico. She gets a free ride.

21 No wonder the telephone records, for the
22 first time, corroborate her story because, for the
23 first time, she has a real reason, a real reason, to
24 make those telephone records to corroborate her
25 story. And there is no corroboration that any of

1 these phone calls that are supposedly to her friends
2 or her other boyfriends or to Cepada, that guy, that
3 any of that is someone that we know of. There is no
4 evidence before you in that regard. It doesn't exist.

5 The only corroboration you have to
6 Estrella Martinez' phone records that Estrella gets to
7 go back to Mexico with her son and gets to walk away
8 from this whole thing.

9 And the only two pieces evidence that you
10 have that says that Ray Dennes was up on the seventh
11 floor; one, Tony Ramirez suddenly says, oh, by the
12 way, Alberto was going to shoot somebody and Ray was
13 going to get the video after the fact and Estrella
14 Martinez was saying we have got these phone calls and
15 I let them in the back door. I let them in a door
16 that was already open. I let them in the door where
17 they were not mustached. There was no disguise. And
18 then I am supposed to distract the security guard.
19 Why are they distracting the security guard? Why does
20 her story say Ray said call and distract a security
21 guard the first time? There is no need to distract
22 the security guard the first time.

23 Now, why that testimony is there is
24 because the phone record said there was a phone call,
25 not because there was a distraction, that was an

1 unnecessary distraction of the security guard. The
2 only time there needed to be a distraction of the
3 security guard when they were going to get a video
4 and, ladies and gentlemen, what was Mr. Copeland's
5 testimony?

6 I go down from the fifth floor. I am
7 going to go check on the deli. I'm not going to open
8 a door for anyone. I am checking on the deli because
9 why? Because sometimes plenty of people go in there
10 and eat all the food up and I go down by myself and
11 there is someone working under the security booth.
12 Someone is already there. He goes out of the elevator
13 and goes into the deli. Then he doesn't see Estrella
14 Martinez there at the door. There is no conversation
15 between Giovani when she is there and left the phone
16 on for ten minutes. Now why that is there because
17 there is a phone record of a ten-minute phone
18 conversation. That's why you hear that story because
19 Estrella Martinez has got to tell them a story that
20 will let her go back to Mexico. She tells them I
21 leave the phone on for ten minutes.

22 Is it beyond possibility that there might
23 have been a conversation between two people going on
24 there for ten minutes and that maybe Estrella Martinez
25 wasn't in on that loop? You got a ten-minute

1 conversation that wasn't a conversation because she
2 has got to have a ten-minute conversation.

3 Ladies and gentlemen, this is one of the
4 most unusual situations that I think you are ever
5 going to get as a juror. You may have something in
6 front of you but it may be the wrong stuff. That's
7 what it comes down to. I have to look at this
8 evidence in light of the way the State charged it.
9 Think about that. You have to look at this evidence
10 in regards to what they have charged as far as what
11 occurred and what the evidence you see. I didn't make
12 that charge. I didn't make it happen that way, and
13 you didn't make it happen that way. But what you have
14 to do is you have to base your verdict according to
15 the law and the evidence and the charge as you see it.

16 Now, if your evidence shows that Ray
17 Dennes in your mind shot Mr. Copeland, the Judge tells
18 you that you can view an extraneous offense, that is,
19 as an extraneous offense. But if the evidence
20 presented before you does not show that Ray Dennes
21 shot Janos Szucs, you can't find him guilty of
22 shooting Janos Szucs. You can't do it. That's not my
23 doing. That's not the Judge's doing. You just can't
24 do it.

25 Every one of you said you could follow the

1 law. And everyone of you are now put into a very
2 tough situation and that is of following the law.
3 When you make your decision as to whether this
4 evidence fits this charge and when you make that
5 decision, you are not supposed to try to decide, well,
6 if we do this, does that mean nothing else is going to
7 happen. I think it's safe to say that we all know
8 something would but that's not supposed to go into
9 your deliberations.

10 What you are suppose to deliberate is
11 whether the charge they have given you and the
12 evidence they have given you match. It ain't enough
13 for Ray Dennes to be involved in something but they
14 have got to prove to you beyond a reasonable doubt,
15 beyond a reasonable doubt, for Houston's sake, that he
16 was guilty of capital murder. That there is no
17 greater offense.

18 Well, man, here I am standing up here,
19 telling you something that everybody hears and we get
20 lip service to but so seldom it gets put into actual
21 practice like it's being put into practice now. We
22 didn't make up these terms "beyond a reasonable
23 doubt." This isn't an accident.

24 For hundreds of years, we have been using
25 our criminal system to say that someone is not going

1 to be guilty until they are found guilty beyond a
2 reasonable doubt, especially on a case where you are
3 talking about life and death. For hundreds of years,
4 we have been doing that. For hundreds of years, there
5 have been other cases. And for hundreds of years,
6 there have been criminal charges. And for hundreds of
7 years, we know that you don't go around assuming
8 anybody into the penitentiary much less even more. We
9 have known for hundreds of years that you don't decide
10 that someone may have done something or that someone
11 could have done something. You have to know that they
12 did something beyond a reasonable doubt.

13 And, ladies and gentlemen, I'm scared to
14 death. I may not look it. I have actually done this
15 before, and I am telling you I'm scared to death
16 because of the choice, the rough choice, that you all
17 have to make. And, ladies and gentlemen, I didn't
18 create that choice for you.

19 You look at the evidence. You follow the
20 Judge's charge and I will rely upon what you told me,
21 each and everyone of you, when I talked to you in voir
22 dire. It's my belief that if you do that, the verdict
23 will not be a guilty and that will be a very difficult
24 thing to do.

25 THE COURT: Thank you, Mr. Odom.

1 Mr. Vinson.

2 MR. VINSON: May it please the Court,
3 ladies and gentlemen of the jury, Mr. Defense
4 counsel: When we talked to you on voir dire several
5 weeks ago, we told you that at some point in time in
6 trial 12 of you would end up in the jury box. And we
7 made you aware then that there would be no pity shown
8 because nowhere in your oath is there anything about
9 pity or sympathy or scared. Yours is to return a true
10 verdict based on the law and the evidence that we gave
11 to you in this courtroom and that's all you are
12 charged with.

13 And you took that oath, and I believe you
14 are going to do that and I believe that Mr. Odom
15 sometimes -- I agree with Mr. Odom, sometimes it's
16 hard to do the right thing but the right thing is a
17 guilty verdict.

18 In response to Mr. Odom's argument that he
19 didn't make this charge, he didn't have anything to
20 do, I agree with him. The person that did it is
21 sitting in this courtroom right here, wearing the
22 green jacket. I don't know why and we don't know
23 where, you, as a jury, don't know when, you know, he
24 thought of this quick way to wealth instead of
25 working, like most of us do every day. I don't know.

1 But really it doesn't concern you.

2 But I do know this. He made some mistakes
3 and I don't know if Mr. Odom might have been in the
4 same courtroom, listening to the same evidence, but
5 here is a capital murder case. We wanted to bring you
6 everything that we could possibly bring you, to show
7 you that your verdict of guilty would be a correct
8 verdict. We brought you everything that was legal and
9 competent, and that's why we had Judge Wallace here.
10 He ruled on that. And everything that was admitted
11 before you in this courtroom is legal and competent
12 evidence for your consideration. We brought it here
13 to assist you. So let's talk about some of this
14 evidence.

15 Start off with Mr. Copeland. What did Mr.
16 Copeland testify to? He came in and he identified the
17 defendant and said, "That's the man who shot me.
18 That's the man right there." They made a big deal if
19 I put a mustache -- if I hadn't been, well, he didn't
20 have a mustache. Well, we put one on him. Even in
21 spite of that, Mr. Copeland said that's the man that
22 shot me.

23 And, ladies and gentlemen, there's
24 something about the man, it triggers when a man you
25 are that close to death. You generally are not going

1 to forget the face of death and that's a face of death
2 facing this Court, this defendant seated in this
3 courtroom. He tried to disguise himself and he did.
4 And he did.

5 What did Mr. Copeland tell you? He said
6 that, of course, the defense is going to twist
7 everything and twist it and under cross examination,
8 they may convince me that this suit is not beige in
9 color; that it is, in fact, red. What did he tell
10 you?

11 He said out of the six men here, the fifth
12 man is the closest one that looks similar. He never
13 said this is the man. He never said that. And how
14 did this man come into play? How did he come into
15 play? I heard a lot of objection, a lot developed.
16 You know how it came in play because the police
17 department investigated him. He was nowhere to be
18 found when this offense was committed. But maybe we
19 should drag him down here.

20 MR. ODOM: I believe that's a misstatement
21 of fact.

22 THE COURT: Stay within the record.

23 MR. VINSON: I am responding to his
24 argument.

25 MR. ODOM: I ask for an instruction to

1 disregard.

2 MR. VINSON: Your Honor, I am responding
3 about the Bogottus brothers.

4 THE COURT: It's overruled.

5 MR. VINSON: Maybe we should drag him
6 through and drag him until we determine after this,
7 lock him up, knowing he didn't have anything to do
8 with it, mistreat him and abuse him.

9 MR. ODOM: Object, once again a
10 misstatement. There is no fact in evidence to support
11 that.

12 THE COURT: Excuse me.

13 Mr. Vinson, let me hear what the objection
14 is. Again, both sides, if I start to respond, please
15 wait.

16 Now let me hear your objection.

17 MR. ODOM: My objection is continuing to
18 put facts not in evidence before the jury and I
19 object.

20 THE COURT: Stay within the evidence.

21 MR. VINSON: I think it is final argument
22 and I can make suggestions.

23 MR. ODOM: Excuse me. Did I have a ruling
24 on my objection?

25 THE COURT: Overruled.

1 MR. VINSON: Maybe we should drag him in
2 here and hold him over there and in spite of what the
3 evidence dictates and in spite of whom the evidence
4 points to, this defendant, no one else but this
5 defendant and his brother and Francisco Rojas.

6 Now, he talks about wanting to put Tony
7 Martinez (sic), down Tony Martinez (sic). Why?
8 Because Tony Martinez (sic) came back to the states
9 after this offense.

10 THE COURT: Tony Ramirez.

11 MR. VINSON: After this offense has been
12 committed and then he goes to the authorities and that
13 upsets him. That upsets the defense. He did not like
14 what Tony Ramirez had to say. They can try to twist
15 that around. Is there any disputed evidence from
16 anywhere that Tony Martinez made some kind of make
17 shift silencer and we don't even know if that thing
18 meets the criteria of federal law or state law, and we
19 don't know. What is unique about that silencer is in
20 his expert witness who came in here.

21 His expert witness never seen the
22 silencer, didn't even know how it was designed, didn't
23 know how much steel wool. Remember this was something
24 done without a lot of sophistication. It was
25 something homemade by this defendant here and put into

1 use. He never said. But he could sit there and he
2 could tell Mr. Smyth, under cross examination, how the
3 bullets and the configurations on the fired projectile
4 would look under the microscope and yet he never had
5 exposure to the weapon nor the silencer that was used.
6 Isn't that unique? Isn't that unique?

7 He never even had, never even saw it but
8 made a statement from this witness stand and gave
9 testimony, oh, I have fired plenty of them. Never
10 inquired how much steel wool was in it and how many
11 washers was in it and whether was there anything fired
12 through steel wool and I tried to come up with steel
13 wool, what is being fired through steel wool.

14 If you remember the design, the design,
15 they had these washers in there. They were packed
16 back to back. You ever try to fire a weapon when the
17 chamber is blocked? I could imagine what would have
18 happened to his hand.

19 MR. ODOM: Object, that is unsworn
20 testimony that he has presented to the jury at this
21 point.

22 THE COURT: Sustained.

23 MR. ODOM: Ask jury to disregard.

24 THE COURT: The jury will disregard the
25 last comment.

1 MR. ODOM: Ask for a mistrial.

2 THE COURT: Overruled.

3 MR. VINSON: We do know that silencer was
4 modified and used on a .9 mm. We do know that the
5 defendant told Ms. Martinez that if she did not
6 distract that guard, what was going to happen. And we
7 do know that Ms. Martinez tried, or attempted to do
8 such, and we do know that she failed in her attempt.
9 And we do know that those tapes are missing and we do
10 know that Mr. Copeland was shot. And we do know that
11 Mr. Copeland wasn't shot simply because of some hate.
12 We know that Mr. Copeland was shot in carrying out the
13 plan to rob who -- Johnny Szucs.

14 What is so important about some tapes that
15 you would walk into a building and shoot an unarmed
16 security guard, who you know is not armed, who you
17 know is not armed unless he is going to put you in
18 that building during the time the robbery is ongoing?

19 We don't know the sequence of the robbery.
20 We don't know if he went upstairs first and committed
21 the robbery and shot Johnny Szucs and then returned
22 downstairs, while his brother was up there, Albert,
23 putting the diamonds away, or we don't know if Albert,
24 did the shooting and then Reinaldo put the diamonds
25 away. And we don't know the combination, and we don't

1 need to know any of that. The law doesn't require
2 that.

3 I don't know what charge the defense was
4 reading but I will read that portion to you. His
5 Honor has given you. This is the law. This one will
6 guide you through the storm and it says right here,
7 and this part, "You can find him guilty if he actually
8 committed the offense himself or if you find from the
9 evidence beyond a reasonable doubt that on or about
10 the 24th day of January, 1996," and I am going to ask
11 you do you have a reasonable doubt that this offense
12 was committed in January of 1996? No, you do not.

13 Is there a reasonable doubt that the
14 person who was killed was Janos Szucs? No, you do
15 not.

16 Do you have any doubt that he was shot
17 with a firearm, a deadly weapon? No, you do not.

18 Do you have any doubt that at the time
19 that he was shot that he was being robbed? No, you do
20 not. His safe is empty. All the cash on him is gone.
21 The only question you have is was this defendant
22 involved in any way. Let's look at the charge again.

23 MR. ODOM: Object to that, that
24 misstatement of law and "involved any in way."

25 MR. VINSON: And I think the lawyer knows,

1 Your Honor.

2 THE COURT: Overruled.

3 MR. VINSON: And we go here, "if you find
4 from the evidence beyond a reasonable doubt that on or
5 about 24th day of January, 1996, in Harris County,
6 Texas, Jose Albert Dennes did then and there
7 unlawfully while in the course of committing or
8 attempting to commit the robbery Janos Szucs
9 intentionally cause the death of Janos Szucs by
10 shooting Janos Szucs with a weapon."

11 Any question about the intent that killed
12 Janos Szucs, the number of times he was shot and the
13 location and the manner, any question about that? I
14 don't think you have any doubt in your mind,
15 absolutely not, based upon the evidence, ladies and
16 gentlemen.

17 We go further, and that the defendant,
18 Reinaldo Dennes, even if he was only down on the first
19 floor, trying to get the tapes in supporting and
20 assisting and encouraging, directing, aiding his
21 brother Albert to commit the offense, the law permits
22 you to find him guilty beyond a reasonable doubt, and
23 then you will not be violating your oaths as a juror.

24 It says right here, right here in front of
25 you, "that the defendant, Reinaldo Dennes, with the

1 intent to promote or assist the commission of the
2 offense, if any, solicited, encouraged, directed,
3 aided or attempted to aid Jose Albert Dennes, if he
4 did, then you will find the defendant guilty of
5 capital murder as charged in the indictment."

6 This is not Mark Vinson talking. That is
7 the instruction you receive from the Judge that the
8 legislature has provided you. And that's what we are
9 looking at, ladies and gentlemen.

10 Now, let's talk about some of the other
11 evidence. The diamonds were never recovered. You can
12 still find him guilty of capital murder. The weapon
13 was never recovered. The silencer wasn't recovered.
14 You can still find him guilty of capital murder. And
15 don't think this is a cop-out, oh, if you find him not
16 guilty, we are going to prosecute him on the other
17 case. That's not what you are charged with. You are
18 charged with the case before you. And I know you are
19 good and honest people and I know you are going to
20 look at this evidence and you are going to say to
21 yourself common sense will dictate and rule in this
22 case. The day of foolishness is over. When we
23 started it, it went out and decided he was going to
24 set up that robbery.

25 What did he say on the phone Tony

1 Martinez? "Do you want to be part of a robbery?"

2 "Okay."

3 "A jeweler, where?"

4 "On the seventh floor of the Greenrich
5 Building."

6 You heard it from Tony's mouth and it
7 wasn't disputed. It wasn't disputed. "Well, my
8 brother will shoot the man."

9 And what would they make a silencer for?
10 Think about that. You get the diamonds and I will get
11 the tape.

12 What more do we need, ladies and
13 gentlemen? What more do we need? Exactly what he is
14 saying?

15 Then he went further. He needed another
16 alibi so resorted to whom: Estrella. He had
17 befriended her to become her lover, her provider. He
18 told her that he will leave his wife for her. And
19 remind you, Mr. Smyth, when he had Estrella Martinez
20 testifying, what did he ask her? He proved that she
21 only made about \$5 an hour. You tell me why do a \$5
22 an hour young lady, who is working as a maid -- and
23 that's not a put down, it is just a fact -- why does
24 she need a portable cell telephone? Why does she need
25 that? And why does she need it for such a short

1 period of time? And how does she come into possession
2 of it when this defendant is suppose to be in
3 Florida?

4 That, ladies and gentlemen, if he had been
5 in Florida, that he sent an investigator in here and
6 brought an investigator in here to show us, you know,
7 the box out of the bank, safety deposit bank. I would
8 think that investigator would bring in some evidence
9 that he was down in Florida.

10 MR. ODOM: Object.

11 MR. VINSON: That's don't you know --

12 MR. ODOM: I object to I am inclined to
13 bring in evidence in that regard. I object to that.
14 It's attempting to shift the burden of proof.

15 MR. VINSON: I haven't attempted to shift
16 the burden. It rests with the State beyond a
17 reasonable doubt. I don't mean to infer that, ladies
18 and gentlemen.

19 MR. ODOM: Judge, I have an objection in
20 that regard and ask for a ruling.

21 THE COURT: It's overruled.

22 MR. VINSON: What I am saying, if they
23 went so far as to send an investigator and went
24 through that expense, don't you know, if he had been
25 down there in Florida at the time, you would have seen

1 something. They even went through the charade today
2 to show the burns around his chest and some of them
3 looked like sunburn to me. I don't know how you
4 viewed them.

5 But, again, there was no disputed evidence
6 that Estrella did not sleep with him, that Estrella
7 was not there with him.

8 And, remember, on Monday that he was
9 suppose to be out of town, on the 22nd, the day of
10 January. What happened? Estrella come into
11 possession of a cell phone. And Mr. Odom was talking
12 about the telephone calls. Well, let's look there and
13 look at Estrella Martinez, a young lady, from Mexico,
14 has a child, trying to make a living. Does she look
15 like the kind of person who could scheme and come up
16 with telephone numbers and all this and remember such
17 accuracy about her contact with this defendant? And
18 why would she get a phone for that time? No, she
19 didn't.

20 This defendant rented that telephone. He
21 needed inside communication. So he would know the
22 whereabouts of the guard, so he needed her as his
23 inside hand and that's how he was able to get in
24 communication with her. And that's how he was able to
25 tell her what to do inside the building.

1 I don't know, maybe you will go back there
2 and look these records and feel they are no good, if
3 you listen to what Mr. Odom had to say, but I would
4 submit to you these records bear on the truth.

5 Look what time she got this telephone.
6 Her first call was on the 22nd day of January, two
7 days before Mr. Szucs was shot and killed. The first
8 telephone call was at 1647, 4:47 in the afternoon.
9 She called a friend. At 1656 Ms. Martinez called
10 Roadmaster Auto. And she was calling to the very
11 people that the defendant stood up here and told you
12 she was not calling. I mean, the defense attorney
13 stood here and said she was not calling. Now, I don't
14 know what he expects you to do, to look at this and
15 say it does not exist, just throw it away. It doesn't
16 exist. We don't want to see it but these are records
17 that were made when these phone calls were being made.

18 Now, Ms. Martinez didn't make a record but
19 the telephone company was keeping a record of it.

20 Look here, on the 24th, too. Why don't
21 you look at something else that is unique. If you
22 look at these telephone calls here, again, it has a
23 lot of communication between the subscriber Reinaldo
24 Dennes and Estrella Martinez. And those telephone
25 calls are all local because if they were not local,

1 what would you have? You would have right here, 2358
2 of that, almost midnight, yes. He put a lot of tracks
3 on them between Houston and Mr. Szucs' office because
4 now he is in Louisiana but he is too stupid to realize
5 he is using the cell phone and it is traceable.

6 When you plan an offense and you bring
7 other people in, especially if you go outside the
8 blood line, the only way is you got to kill everybody.
9 You kill Estrella Martinez and Estrella Martinez
10 probably wouldn't be here. It probably still would
11 not be solved but we brought in Ms. Martinez. And,
12 for some reason, after having a conversation with this
13 defendant after he was arrested, she decided that she
14 better look out for herself. And there's nothing
15 wrong with that. There's nothing wrong with that.
16 And the defense attorney is going to make you think
17 there is something sinister about Ms. Martinez coming
18 and telling the truth.

19 MR. ODOM: I am going to object to that as
20 a criticism of defense counsel, striking at the
21 defendant over his back in regards to what defense
22 counsel attempting to make sinister evidence on the
23 part of a witness. We would ask for a ruling, Your
24 Honor.

25 THE COURT: I think what he said --

1 MR. VINSON: Throughout this trial he
2 attacked Ms. Martinez in argument, and I am responding
3 to his argument.

4 MR. ODOM: I re-urge my objection again,
5 attempting to think the defense counsel is up to some
6 kind of trickery or improper procedure and that such
7 is striking at the defendant through his counsel.

8 THE COURT: Sustained. The jury will
9 disregard that last comment by Mr. Vinson.

10 MR. ODOM: Ask for a motion for new trial.

11 THE COURT: Be denied.

12 MR. VINSON: Well, ladies and gentlemen,
13 you saw and you heard what this attorney said about
14 Ms. Martinez. Now, that's in your brain. That's in
15 your ear. You heard what he said and you heard how he
16 tried to attack her. And why does she rate this
17 morning and, again, it was an attack upon her, the
18 charge. The defendant take her as a charade.

19 MR. ODOM: Attempt to object to defense
20 counsel's remark charade.

21 THE COURT: I sustain the objection, Mr.
22 Vinson. Let's move on.

23 The jury will disregard. Any motion for
24 mistrial is overruled.

25 MR. ODOM: Thank you, Judge.

1 MR. VINSON: Again, ladies and gentlemen,
2 look at all the evidence.

3 And with respect to the attorney who came
4 in here and testified yesterday, you know what's
5 unique about him. He couldn't even tell you -- and I
6 didn't even correct him -- he couldn't even tell you
7 the Judge who appointed him to go over there and stand
8 in on behalf of this defendant and his brother. He
9 came in here and he told you that it was another
10 Judge. He recalled another Judge's name. It was
11 Judge godwin.

12 He couldn't even remember what they looked
13 like. He couldn't even remember where they were in
14 the lineup. He kept no notes. He didn't refresh
15 anything.

16 He just walked in here, like he walked off
17 the street, and came in here or, oh, I do remember
18 this. I remember that it was, no, didn't identify
19 anyone.

20 And he suggested to you -- he didn't
21 suggest, he said it -- he said that the police
22 officer, that is, Officer Todd Miller, who came in
23 here and testified, told you how the lineup went, came
24 in here and he told you Officer Todd Miller suggested
25 that it was number five and put a mustache on him.

1 Now, ladies and gentlemen, you know that
2 wasn't true. If it had happened, you would have heard
3 something about that. If you heard something about
4 that that lineup long before Todd Miller testified.
5 You didn't hear nothing about that, and it didn't
6 happen that way. It did not happen that way.

7 And go back and ask yourself if this is a
8 serious case, wouldn't you keep notes? Wouldn't he,
9 at least, look at the video? Wouldn't he be prepared
10 to come in?

11 And we talked to our witnesses and we
12 prepared our witnesses because we wanted the truth
13 brought to you and we didn't want to waste your time.

14 But, again, you go back there and look at
15 all the evidence and there is nothing to dispute what
16 Tony Martinez told you. There's no evidence to
17 dispute what Estrella told you. This is all the
18 evidence in the world you need to find this defendant
19 guilty of capital murder. But if you come back with a
20 guilt of capital murder, you are not going to cry. He
21 is just as guilty today as he was the day he committed
22 the offense. He is just as guilty today as the day he
23 started planning this offense.

24 And when you make a silencer, you know
25 it's to be used. You just don't make that, or have

1 somebody make it for you, for keep's sake. And Tony
2 Ramirez told you that steel wool was in it and what
3 happened? You found steel wool in his office. Tony
4 Ramirez said that it was made out of aluminum. What
5 do you find: Aluminum in his office.

6 When you heard the crime scene
7 investigator went into the office of Mr. Szucs, Johnny
8 Szucs, what did he tell you? "It was very unique,
9 that crime scene. Never seen anything like it."

10 And what did he find there? Steel wool.

11 THE COURT: Five minutes.

12 MR. VINSON: Steel wool. And I realize
13 you will be wrestling with this very shortly. This
14 will be your case. In fact, I believe I have said all
15 I can really say about this case. And I think you are
16 intelligent and I think you are smart enough and you
17 won't fall for any shenanigans and you are going back
18 there and return a proper verdict and a verdict that
19 you can be proud of, a verdict that will say to other
20 schemers like this defendant here, if you do it in
21 this county, in the State, bring the evidence and
22 convince us beyond a reasonable doubt, we are going to
23 find you guilty. And we are going to be willing to
24 walk back in the courtroom, hold our heads proud and
25 high, and give that verdict to that Judge and move on

1 to other business.

2 Thank you, ladies and gentlemen.

3 THE COURT: Thank you, Mr. Vinson.

4 Ladies and gentlemen, we are going to take
5 a little break for about as long as it takes you, if
6 you want to run downstairs and come back. Any
7 objection.

8 Once you already commence your
9 deliberations, you will be in there for a while. You
10 wait a moment, have another chance to get back
11 downstairs so, please, it's about 2:20. After, I
12 would like you back up here in the jury box at 25 till
13 and we stand in a very brief recess.

14 The audience will remain.

15 THE BAILIFF: Everybody be seated until
16 the jury leaves.

17 THE COURT: There is a couple that went
18 outside. I want somebody to escort them down and back.

19 (Recess taken.)

20 (Jury came into the courtroom.)

21 THE COURT: Ladies and gentlemen, what has
22 happened, you have now heard all the evidence in the
23 case. You have heard arguments of counsel and it's
24 now almost a quarter to 4:00. We are going to allow
25 you to commence your deliberations in this case.

1 And it's my goal to stay a reasonable
2 amount of time this evening, to see if we are near
3 reaching a verdict on the guilt or innocence phase.
4 So, later on, if we are here, you need to make phone
5 calls, obviously you can do that and we will commence
6 our deliberations now.

7 Remember the law that I have given you in
8 the charge. Specifically I want to reiterate the fact
9 that in the charge there is a paragraph dealing with
10 the right to be subject or to testify and you are not
11 to, in any way, discuss the fact that the defendant
12 did not testify. You are not to use it against him in
13 any form or fashion. If you mention it out loud to
14 anybody in the jury room, somebody is to let me know
15 immediately because all that does is lead to
16 reversible error in this case, and I do not want that
17 to happen. You are not to discuss it. You are not to
18 consider it. Is there any questions?

19 Very well. Please commence your
20 deliberations and go with the bailiff. Stand
21 adjourned until you have reached a unanimous verdict.

22 (Jury the courtroom.)

23 (Whereupon, State's Exhibit No. 174 was
24 marked for identification.)

25 THE COURT: What would you like to place

1 on the record?

2 MR. VINSON: Your Honor, there were a
3 total of 27 autopsy photos. We introduced seven to
4 show specifically one location and the locations and
5 injuries sustained by those wounds, and for
6 demonstrative purposes, to show how the wounds could
7 have been inflicted. There are 20 additional
8 photographs that we did not offer. And I think the
9 Court looked at when we initially offered nine
10 photographs and the Court only allowed us to offer
11 seven photographs, which was still suitable. And the
12 additional 20 we have marked for identification as
13 State's Exhibit 174. We are going to seal this and
14 the Court can look at this, and we will seal this for
15 the appellate review only.

16 THE COURT: You don't have any objection?

17 MR. ODOM: No, Judge.

18 THE COURT: They are admitted for an
19 appellate purpose.

20 MR. ODOM: And I assume that the exhibit
21 I offered, which, I believe, was number -- the proof.

22 THE COURT: All right, that, too.

23 Ladies and gentlemen, if I could have your
24 attention, they have a verdict. I want no outcries or
25 any comments made from the audience or any such

1 remarks. And I will hold you in contempt and I am
2 very serious. If you holler out anything, you are
3 going to jail. Do we understand each other on that
4 matter?

5 Thank you very much.

6 Let's bring the jury out.

7 (Jury came into the courtroom.)

8 THE COURT: Please be seated, ladies and
9 gentlemen.

10 Sir, are you the foreman?

11 THE FOREMAN: Yes, sir.

12 THE COURT: Has the jury reached a
13 unanimous verdict in this case?

14 THE FOREMAN: Yes.

15 THE COURT: Will the defendant please
16 stand.

17 "We, the jury, find the defendant,
18 Reinaldo Dennes, guilty of capital murder as charged
19 in the indictment," signed foreman of the jury.

20 Do you need to request to have to jury
21 polled?

22 MR. ODOM: Yes it's for the appellate
23 record.

24 THE COURT: We are going to ask each of
25 you individually whether or not this is your

1 individual verdict. For that purpose, I will number
2 you from one through six, seven through twelve, and
3 let me complete the question for the record before you
4 respond.

5 (Jury polled and all affirmed the
6 verdict.)

7 THE COURT: Thank you very much.

8 What we are going to do at the present
9 time is we are calling it a day. And what we plan to
10 do tomorrow is commence the punishment phase of the
11 trial, and that's going to commence at 1:00 for
12 reasons of conflicts that there are just some things
13 that need to be done, doctor appointments, and that's
14 including myself. And so we are going to recess until
15 1:00 tomorrow.

16 You are going to go directly up to the
17 courtroom. Do not go downstairs. Come directly up to
18 the courtroom and give yourself maybe a couple of
19 minutes leeway and maybe he will be here by five till and
20 we will place you directly in the jury room.

21 All we are going to do tomorrow is, from
22 my understanding, we will complete tomorrow, the
23 punishment phase, as far as any evidence by the State
24 or the defense regarding punishment and, then, I will
25 let you go home. Because if we go into argument and

1 as far as continue your deliberations, I will have to
2 keep you overnight until you have reached a verdict.
3 I don't think anybody wants to be sequestered over
4 Labor Day weekend, for all 12 of you said you wanted
5 to do otherwise. We will commence the punishment
6 phase tomorrow. As soon as all the evidence is
7 offered by either side, I will recess and come back
8 Tuesday morning, you will then hear arguments of
9 counsel and then you will commence your
10 deliberations. And the reason for that is to give you
11 much more time to deliberate in this case on
12 punishment, but in the event I forget to tell you,
13 tomorrow, Tuesday, be sure to bring any medications
14 you need and any overnight accommodations, personal
15 toiletries, and things of that nature. So in the
16 event you do not reach a verdict on Tuesday with
17 regard to the punishment, you will have those things
18 available to you because we will need to sequester
19 you. Any question?

20 Let me admonish you again about I have no
21 doubt that before you return, be it tomorrow or
22 certainly by Tuesday, there will be some publicity
23 about this case in the various media. You are
24 instructed once again not to read anything about this
25 case in the paper, to watch any television accounts or

1 listen to anything on radio about this matter.

2 If there are any questions about what is
3 going to happen over the course of the next few days,
4 I want to make sure there is no confusion. And,
5 again, my idea is not to commence your deliberations
6 tomorrow because I don't know how many of your
7 attitude is. Let's get it over and get through and
8 continue to deliberate and take a break and come back
9 on Tuesday. I assume all of you, most of you,
10 Tuesday; is that improper or incorrect? How many you
11 want to get through with it and take Saturday,
12 whatever, that's wants to, whatever?

13 We stand in recess until 1:00 tomorrow.
14 Come straight up here. And we will get started
15 immediately after we get all of you in the courtroom.

16 Ladies and gentlemen in the audience,
17 please keep your seats.

18 The jury is dismissed. Thank you very
19 much. See you tomorrow at 1:00. We stand adjourned.

20 (Court adjourned for the day.)

21

22

23

24

25

CAUSE NO. 750,313


THE STATE OF TEXAS IN THE 263RD DISTRICT COURT

VS OF

REINALDO DENNES HARRIS COUNTY, T E X A S

I, Sharon Kay Cook, Official Court
Reporter of said court, hereby certify that the
foregoing pages comprise a true, complete and correct
transcript of the proceedings had in the above styled
and numbered cause.

WITNESS MY HAND this the 21st day of

 _____, 1998.


Sharon Kay Cook

Official Court Reporter
301 San Jacinto
Houston, Texas 77002
713-755-6944
Certificate No. 1013
December 31, 1998

APPELLATE COURT NO. **72966**
IN THE COURT OF APPEALS
OF THE STATE OF TEXAS

REINALDO DENNES,

Appellant,

VS.

THE STATE OF TEXAS,

Appellee.

TRIAL CAUSE NO. 750,313
APPEAL FROM 263RD JUDICIAL DISTRICT
OF HARRIS COUNTY, TEXAS
THE HONORABLE JIM WALLACE, PRESIDING JUDGE

PUNISHMENT HEARING

August 29, 1997

REPORTER'S RECORD

VOLUME 34 OF **39** VOLUMES

Kaye G. Jameson
Deputy Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED IN
COURT OF CRIMINAL APPEALS

FEB 25 1998

Troy C. Bennett, Jr., Clerk

STATE OF TEXAS IN THE 263RD DISTRICT COURT
VS. OF
REINALDO DENNES HARRIS COUNTY, T E X A S

A P P E A R A N C E S:

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1 BE IT REMEMBERED that upon this the
2 29th day of August, A. D. 1997, the above entitled
3 and numbered cause came on for punishment hearing
4 before the Honorable Jim Wallace, Judge of the
5 263rd District Court of Harris County, Texas; and
6 the State appearing by counsel and the Defendant
7 appearing in person and by counsel, announced
8 ready for hearing and a jury having been selected,
9 impaneled, and sworn and all preliminary matters
10 having been disposed of, the following proceedings
11 were had, viz:

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P R O C E E D I N G S

THE COURT: Let's let the record reflect the State is present. The defendant is present with his attorney. The jury is not present.

In an attempt to save time, we've got a proposed charge that I understand, of course, we'll have an opportunity to further review after the close of punishment evidence. But at this time with the changes that we had previously discussed with the State, does the State have any objections to the charge?

MR. VINSON: We have no objection, Your Honor, other than where the defense has attempted to add circumstances, warranted life rather than death to the special issues. We have no objection to having that placed in the instruction omitting evidence or circumstances with respect to the third issue.

THE COURT: Well, I thought that's where we were going to put it.

MR. VINSON: Well, they made some changes. I think they put it in the first and second.

MR. ODOM: Well, this is relating to this

1 special issue and it doesn't differentiate between
2 the first issue, the second issue, or the third
3 issue. Aren't they all three special issues?

4 MR. VINSON: No.

5 THE COURT: It's in all three special
6 issues.

7 MR. VINSON: Yes, it is. I apologize.

8 MR. ODOM: That's general language, as I
9 understand it.

10 MR. VINSON: It does say deliberating on
11 the issues where they make them collective.

12 THE COURT: Anything further other than
13 the request of the State to add a paragraph
14 dealing with extraneous?

15 MR. VINSON: Nothing further, Your
16 Honor.

17 THE COURT: Go ahead and proceed into
18 that, Mr. Vinson. You're asking that an
19 extraneous paragraph be included?

20 MR. VINSON: Yes, Your Honor, and that
21 the extraneous paragraph instruct the jury that
22 you are further instructed that if there is any
23 testimony before you in this case regarding the
24 defendant having committed offenses other than the
25 offense alleged against him in the indictment, you

1 cannot consider said testimony for any purpose
2 unless you find and believe beyond a reasonable
3 doubt that the defendant committed such other
4 offenses, if any were committed, and then you may
5 only consider the same in determining the answer
6 to the special issues.

7 THE COURT: Okay, let's let the record
8 reflect that previously I had heard a rendition of
9 what it is regarding the particular extraneous the
10 State intends to offer on punishment. It's my
11 ruling that there is sufficient evidence that if
12 the jury were to believe everything that the
13 witnesses called by the State were to testify to,
14 there is sufficient evidence to find that the
15 defendant, Mr. Dennes, would be guilty of that
16 offense beyond a reasonable doubt. Having made
17 that determination, I'm going to allow the State
18 the opportunity to present those witnesses to
19 testify regarding such extraneous offense and, of
20 course, with the addition of the charge now of the
21 extraneous paragraph.

22 Anything further from the State?

23 MR. VINSON: Nothing further from the
24 state, Your Honor.

25 THE COURT: Mr. Odom, do you have

1 anything else?

2 MR. ODOM: Yes, sir, I have several
3 objections.

4 THE COURT: Other than anything that
5 we've not already agreed to address in place of
6 the charge? Anything that we've said that we're
7 not inclined to do so, please feel free to
8 proceed.

9 MR. ODOM: Judge, the only issue is Mr.
10 Vinson and I have not had time to discuss whether
11 and/or how we would apply this last issue that
12 they objected to to the fine to Issue No. 3 in the
13 charge.

14 THE COURT: And what are we talking
15 about?

16 MR. VINSON: Mitigation.

17 MR. ODOM: In the application part of the
18 charge, we were working on this.

19 Okay, the page, we have it as page 6 on
20 this rough copy that it's in answering Special
21 Issue No. 3, you shall consider mitigating
22 evidence to be evidence that a juror might regard
23 as reducing the defendant's moral blameworthiness,
24 including evidence of the defendant's background,
25 character --

1 THE COURT: Slow down a little bit.
2 She's putting this on the record.

3 MR. ODOM: The personal moral culpability
4 of the defendant or the circumstances of the
5 offense that mitigates against the imposition of
6 the death penalty, which I believe is correct
7 under Article 37.07 (1-e). However, we have not
8 yet figured out how to put in the rest of the
9 sentence under that section.

10 THE COURT: Which is?

11 MR. ODOM: "Or circumstances to warrant
12 that a sentence of life rather than a death
13 sentence be imposed." And I think that because of
14 the wording of this language that it has to be
15 either in another paragraph or we have to
16 incorporate it somehow because they have
17 incorporated the definition of what is mitigating
18 evidence under Section 4 under (e-4), into section
19 E, and therefore it makes it difficult --

20 THE COURT: Read the language you want to
21 include one more time for me.

22 MR. ODOM: The language is, "or
23 circumstances to warrant that a sentence of life
24 imprisonment rather than a death sentence be
25 imposed."

1 Now, what we have done on this particular
2 charge is we've combined the first part of that
3 paragraph with the definition of what is
4 mitigating evidence which is appropriate because
5 the first part of the definition talks about
6 mitigating evidence.

7 THE COURT: Okay.

8 MR. ODOM: Then the legislature says
9 clearly or referring to something other than
10 mitigating evidence, circumstances to warrant that
11 a life -- that a sentence of life imprisonment
12 rather than the death sentence be imposed.

13 No, that says "circumstances of the
14 offense," and there is a big difference.

15 THE COURT: Excuse me. Let's follow
16 along, third line, "including evidence" -- do you
17 see that, the very last -- "including evidence of
18 the defendant's background, character, personal
19 moral culpability of the defendant or the
20 circumstances of the offense that mitigates
21 against" -- throw in your language.

22 MR. ODOM: But, Judge, that is -- I mean
23 that is -- you can't just add "or."

24 MR. SMYTH: You add that onto the end of
25 that sentence, or to warrant, circumstances to

1 warrant that a sentence of life rather than death
2 sentence be imposed.

3 THE COURT: There you go. Then take out
4 the rest of that, beyond -- take the rest of that
5 sentence out, the imposition of the death
6 penalty.

7 Now read that to yourselves and see if
8 that makes sense and see if that satisfies your
9 requirement. You can just pick it up where it
10 was.

11 (Brief recess).

12 THE COURT: Back on the record. Let's
13 get back on the record.

14 You took out more than what I thought.
15 What I said was you were going to leave in, or the
16 circumstances of the offense that mitigates
17 against or warrants that a sentence of life
18 imprisonment rather, blah, blah, blah, be
19 imposed.

20 MR. SMYTH: Wouldn't you have to have,
21 Judge, "that mitigates against the death penalty,"
22 have that whole phrase in there in order to
23 complete the thought?

24 THE COURT: Listen again. "Or the
25 circumstances of the offense that mitigates

1 against." Or circumstances --

2 MR. ODOM: Here the problem is is that
3 the way I read this, there is two --

4 THE COURT: We're not on the record.

5 MR. ODOM: Well, we can be. There is two
6 issues here. Mitigating circumstances or
7 circumstances to warrant that life as opposed to
8 death be imposed. Mitigating circumstances are
9 defined -- and we give examples of that -- and
10 mitigating circumstances are circumstances that
11 might reduce the defendant's moral
12 blameworthiness. But circumstances to warrant
13 life as opposed to death is not defined as such
14 although examples are given. Such as all the
15 evidence in the case in chief, the defendant's
16 character and background and then the personal
17 moral culpability of the defendant, I suppose,
18 would be that --

19 THE COURT: Okay, I don't want to drag
20 this out forever. The end of the paragraph says
21 "death penalty." The personal moral culpability
22 of the defendant or the circumstances of the
23 offense that mitigates against the imposition of
24 the death penalty or circumstances to warrant that
25 a sentence of life imprisonment rather than a

1 death sentence be imposed. We just add it to the
2 end of the sentence. Add that language.

3 MR. ODOM: But how does the sentence
4 start?

5 THE COURT: In answering Special Issue
6 No. 3, you shall consider mitigating evidence to
7 be evidence that a juror might regard as reducing
8 his blah, blah, blah, the personal moral
9 culpability of the defendant or the circumstances
10 of the offense. That's all the what if's that
11 mitigates the imposition of the death penalty,
12 comma, or circumstances, I would say that
13 warrant --

14 MR. ODOM: Well, see, that's implying
15 that that's mitigating evidence. And I think
16 you've got a difference between what they define
17 as mitigating evidence and circumstances that
18 warrant life versus death because you have a
19 specific definition of mitigating evidence.

20 MR. SMYTH: The "or" takes care of that.
21 That's what the "or" is all about. It starts a
22 new thought.

23 MR. ODOM: May I see that?

24 THE COURT: Yes, it can be "and" instead
25 of "or."

1 MR. ODOM: That's certainly what the
2 statute does.

3 THE COURT: It's two separate trains of
4 thought.

5 MR. ODOM: Right.

6 THE COURT: So if we just add that
7 sentence, I think, to identify.

8 MR. SMYTH: That allows it to go either
9 way.

10 MR. ODOM: I still object to it because I
11 think mitigating evidence is simply evidence that
12 a juror might regard as reducing the defendant's
13 moral blameworthiness. The rest of this may be
14 circumstances that warrant a sentence of life
15 imprisonment as opposed to pure mitigating
16 evidence.

17 THE COURT: May I see it again? I think
18 the "or" takes care of it.

19 MR. ODOM: See what you've got. We have
20 incorporated a definition of mitigating evidence
21 into the section of the paragraph that talks about
22 the factors that the Court, that the jury shall
23 consider on Special Issue No. 3. And you're
24 defining everything as mitigating circumstances
25 when the Code doesn't define everything as

1 mitigating evidence.

2 MR. SMYTH: Basically, Judge, that's
3 tracking -- that's tracking the question three.

4 THE COURT: Okay. This is what I'll
5 allow: Semi colon, penalty and track the language
6 right there, "or circumstances to warrant that a
7 sentence of life imprisonment rather than a death
8 sentence be imposed."

9 I'll allow that and that's it. Is there
10 an objection to that?

11 MR. ODOM: Judge, I'm not sure what's on
12 the record and what's not on the record. But my
13 objection is this, is that the article under
14 section (e) gives a definition of fact of evidence
15 in circumstances that a jury considers, and they
16 list a number of items. And one of those items is
17 mitigating circumstances. Number 4 under (e)
18 defines mitigating circumstances as evidence that
19 a juror might regard as reducing the defendant's
20 moral blameworthiness. The way this is read, it
21 implies that all of these factors such as
22 circumstances of the offense, the defendant's
23 character and background and the personal moral
24 culpability of the defendant is a mitigating
25 circumstance when, in fact, they may very well be

1 circumstances that warrant a sentence of life as
2 opposed to death. And I think that the way that
3 it's written now allows a jury to not consider
4 those as circumstances to warrant life as opposed
5 to death, it only limits to them as to the
6 definition of mitigating circumstances which go
7 entirely to reducing the defendant's moral
8 blameworthiness.

9 THE COURT: Okay, and I already made the
10 ruling on that last portion. What else, Mr.
11 Odom?

12 MR. ODOM: He's completely misreading
13 that, Judge. I'm not going to get into it. But
14 that "or" in there is mitigating circumstance or
15 circumstances mitigating modifies both
16 circumstance and circumstances.

17 THE COURT: I take it at this time the
18 State has no objection to adding that last -- I
19 don't think it makes any difference.

20 MR. SMYTH: No.

21 THE COURT: Okay, what else?

22 MR. ODOM: My objections to the charge
23 are --

24 THE COURT: Additional?

25 MR. ODOM: Additional are that in a

1 number of places we have put in the charge what we
2 call a sympathy charge. And the first place I see
3 it is what I view on my copy as page 4 of my copy,
4 language that says, "You are further instructed
5 that you are not to be swayed by mere sentiment,
6 conjecture, sympathy, passion, prejudice, public
7 opinion or public feeling in considering all the
8 evidence before you in answering Special Issue No.
9 1."

10 THE COURT: I thought that's what we
11 added that you requested earlier to take care of
12 that problem. No?

13 MR. ODOM: No, Judge. I think that some
14 of that charge isn't appropriate in that sympathy
15 is a -- could very well be a consideration that a
16 jury could take into consideration in determining
17 either mitigating circumstances or circumstances
18 to warrant a life imprisonment as opposed to a
19 death sentence and/or could be in conflict with
20 the section 37.071 that says the State and the
21 defendant shall be permitted to present arguments
22 for and against the death penalty.

23 THE COURT: Let me ask you this: You
24 want it out of 1, 2, and 3 or just out of 3?

25 MR. ODOM: Judge, I think -- well, you're

1 right. I would request that it be out of all of
2 them but certainly my arguments are geared more
3 towards No. 3, towards the issue --

4 THE COURT: Mitigating?

5 MR. ODOM: -- what we call the mitigation
6 issue.

7 THE COURT: What is it that you would
8 want out, all of that or just the passion or the
9 sympathy?

10 MR. ODOM: Under No. 3, it says you're
11 not to be swayed by mere sentiment, conjecture,
12 sympathy, passion, prejudice, public opinion or
13 public feeling. I think that mere sentiment and
14 sympathy should be taken out. It should be: You
15 should not be swayed by passion, prejudice, public
16 opinion or public feeling in considering all the
17 evidence before you in answering Special Issue No.
18 3.

19 THE COURT: Does the State have a problem
20 with that?

21 MR. SMYTH: What do you want to do?

22 MR. ODOM: I want to take out "sympathy
23 and sentiment."

24 THE COURT: It's on page 6. Does the
25 State have any objection?

1 MR. VINSON: Judge, that has been
2 standard throughout all our charges, and we're
3 going to keep manipulating this charge until we
4 don't know what we have here. I would say leave
5 it just as it is. He has plenty of protection
6 under the Court's guidance with respect to Special
7 Issue No. 3. You have instructed the jury on
8 mitigation, if there is any mitigation, and what
9 weight to give the mitigation.

10 THE COURT: Okay, it's overruled. What's
11 next?

12 MR. ODOM: I do not object to the
13 extraneous offense charge because I think it is
14 admissible as to David Copeland. However, I
15 strongly object to evidence regarding any other
16 extraneous acts of misconduct or bad acts of
17 misconduct. And I'd like to go on the record and
18 reiterate my objection that I raised earlier in
19 regards to that issue --

20 THE COURT: Go ahead.

21 MR. ODOM: -- and put in certain issues
22 into evidence. I have filed a number of motions.

23 THE COURT: I take that back. I think
24 this is inappropriate. Let's finish the charge.
25 What else on the charge then immediately? You can

1 circumstances that warrant a sentence of life as
2 opposed to death. And I think that the way that
3 it's written now allows a jury to not consider
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22 for and against the death penalty.

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20 with that?

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23 and sentiment."

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25 State have any objection?

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5 it just as it is. He has plenty of protection
6 under the Court's guidance with respect to Special
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19 regards to that issue --

20 THE COURT: Go ahead.

21 MR. ODOM: -- and put in certain issues
22 into evidence. I have filed a number of motions.

23 THE COURT: I take that back. I think
24 this is inappropriate. Let's finish the charge.
25 What else on the charge then immediately? You can

1 leave it up here.

2 MR. ODOM: That's all I have on the
3 charge, Judge.

4 THE COURT: Let's make those changes
5 based on what we have either now agreed to or have
6 been ruled on so that as quickly as possible we
7 can get a fresh copy of this so that when you rest
8 on punishment we can have something to look at so
9 we don't have to keep the jury out very long
10 waiting to deal with the punishment charge.

11 MR. VINSON: Judge, on page 6, "You shall
12 consider evidence that a jury might consider
13 regarding reducing the defendant's moral
14 blameworthiness, including evidence of the
15 defendant's background, character, personal moral
16 culpability of the defendant, or the circumstances
17 of the offense to warrant a sentence of life be
18 imposed rather than a death sentence be imposed."

19 THE COURT: Well, that's close to it.

20 MR. VINSON: Is that what you wanted?

21 THE COURT: No. No, this entire
22 paragraph just like it is with a semicolon at the
23 end of that paragraph and add that additional
24 language. Did you follow that?

25 MR. VINSON: Yes, correct.

1 THE COURT: The entire paragraph just as
2 it is and add that additional.

3 Anything further on that, Mr. Vinson?
4 You-all think you have it?

5 Okay, now, Mr. Odom.

6 MR. ODOM: Yes, sir. I renew my
7 objection that I made prior to the start of this
8 case. I filed two motions. I filed a motion for
9 continuance and I requested and/or of the Court
10 that if we not, either that we continue the case
11 in order to allow me to investigate the extraneous
12 offenses or that the extraneous offenses not come
13 into evidence. I filed that motion after becoming
14 aware on August the 13th of 1997, or being told
15 that there were going to be extraneous offenses
16 that are offered into evidence. The following
17 Monday, which date I believe is the 18th, is when
18 I filed the motion and we had a hearing in
19 chambers regarding these issues. And I reiterate
20 all the objections I had at that time. The basis,
21 the primary basis of my objection is this, that
22 the Court on January the 13th of 1997, made a
23 ruling in regards to motions that I filed,
24 defendant's request for notice of intent to offer
25 extraneous conduct at the punishment phase, motion

1 for discovery and inspection, motion for discovery
2 of relevant extraneous matters that may be
3 presented by the State under Article 37.071 and
4 37.07 of the Texas Code of Criminal Procedure and
5 have a request for notice of intent to offer
6 extraneous conduct at the guilt-innocence phase,
7 that the State inform me of any extraneous
8 offenses that they would offer at the punishment
9 stage. And the Court ruled on that day that the
10 State would have to give me the date and count of
11 the allegations, the offense reports, let them see
12 the offense reports so they can gather all the
13 information they have in the offense reports, and
14 that will be done two weeks prior to the date of
15 trial.

16 THE COURT: Two weeks prior to the date
17 of trial?

18 MR. ODOM: Yes, sir. We then determined
19 that date of trial would be the actual start of
20 the testimony.

21 THE COURT: May I see where that is?

22 MR. ODOM: Yes, sir. Actually you said
23 no less than 15 days. I have it paper clipped,
24 Judge, at the various locations.

25 THE COURT: Okay.

1 MR. ODOM: When we got to 15 days prior
2 to the actual date of testimony, I started voir
3 diring the jury on the fact, based upon the
4 Court's ruling and based upon the fact the State
5 had not given me any notice of the fact that in
6 regards to Special Issue No. 1 and Special Issue
7 No. 3 that there would not be extraneous offenses
8 and detrimentally relied on the Court's ruling
9 that the State give me notice within 15 days prior
10 to the start of testimony and does so in good
11 faith and did so to my detriment in that I have
12 voir dired the jury for a different case than the
13 one I am presently facing.

14 I believe that when this matter came
15 before the Court on the 18th that the issue then
16 arose as to whether this was newly discovered
17 evidence on the part of the State. And I believe
18 that at that hearing it was determined that
19 although the State was working up its case and was
20 working on various witnesses and made the
21 representation that they hadn't firmed it up, that
22 they certainly had knowledge of these matters
23 prior to the five day notice. And as such, I
24 don't think the State can rely upon a "we just
25 discovered this evidence" in order to say that

1 there was not a compliance to the five day
2 requirement ruling that I relied upon on the part
3 of the Court.

4 I'd further put in evidence the fact that
5 the 15 days prior from that day, the date of
6 August the 13th, up until we actually started
7 testimony, that I picked the jury by myself
8 although on rare occasions when I had a non-lawyer
9 sit with me during that time period, that during
10 the trial of this case I have been unable to do
11 anything other than try this case and certainly
12 have been unable to investigate and to pursue any
13 matters regarding the validity of these extraneous
14 offenses that they intend to offer. And I would
15 submit to the Court that I am absolutely
16 unprepared to deal with these issues as far as
17 cross examination, as far as research, as far as
18 being aware of the matters, and as such would
19 re-urge my motion for continuance if the Court is
20 going to allow the extraneous offenses to come in
21 so that I have an opportunity to investigate this
22 matter and offer some semblance of effective cross
23 examination and investigation into this matter.
24 All of the work that has been done has been done
25 on the case as I knew it to exist from that date

1 prior to the 15th. I'd also point out to the
2 Court that the Court, although withholding a
3 ruling on the 18th, certainly indicated that the
4 Court had serious concerns about the matter and
5 indicated an unwillingness to let these extraneous
6 offenses to come in. While I know that that is
7 nothing to -- that a defense counsel can rely on,
8 I can represent to the Court that I haven't had
9 time to do anything other than work on this case
10 since that time. I believe that it is not
11 adequate notice. I believe that the State new
12 this prior to the 15 days prior to this offense --
13 this trial starting. I believe I relied upon the
14 Court's order, and I believe I relied upon the
15 Court's order to accomplish a detrimental jury to
16 myself as well as surprise to myself and as such I
17 would, first of all, ask for a continuance, renew
18 my motion for a continuance so that I can
19 investigate this matter.

20 THE COURT: You're getting repetitious,
21 Mr. Odom.

22 MR. ODOM: If that's denied, I would
23 object to any admissibility of these extraneous
24 offenses.

25 THE COURT: Let's let the record reflect

1 that Mr. Odom was advised by the State on the 13th
2 August that they were working on the possibility
3 of bringing up an extraneous. It's my
4 recollection of that meeting that even at that
5 time they were not yet prepared to be able to move
6 forward. Let's let the record reflect that it's
7 been 21 days since that date, this being September
8 2nd, in which Mr. Odom was advised that the State
9 was preparing to bring forward an extraneous.

10 Let's let the record further reflect that
11 this case commenced on July the 22nd with the
12 selection of the jury, that at that period of time
13 and it was in the opinion of the Court that
14 counsel did know or should have known that we were
15 still over a month away from trial and that that
16 was certainly a large enough window of opportunity
17 that an extraneous might pop up within that
18 period, well within the time frame that had been
19 provided, and that in an abundance of caution, I
20 think it should have been the defense attorney's
21 responsibility if you believed it to be important
22 enough to voir dire his jury on the issues of
23 extraneous offenses, given the fact that there was
24 still plenty of time for the State to bring in an
25 extraneous offense, as I mentioned, in an

1 abundance of caution.

2 Let's further reflect that my
3 recollection recalls that the jury -- the
4 selection of the jury was completed on -- we
5 completed --

6 MR. SMYTH: That's when we picked that
7 jury, Your Honor, on the 18th. The Court gave us
8 each an opportunity to voir dire then.

9 THE COURT: Okay, on the 18th the jury
10 was selected and thereafter -- that was a Monday
11 -- we had no business with the Court regarding
12 this matter on the 19th, 20th, 21st, 22nd, 24th
13 and not until the 25th did we commence trial. So
14 there was almost a week's period at that time when
15 this case was in recess, if you will, where there
16 was no jury selection and there was no trial being
17 had with regard to this matter that defense
18 counsel had an opportunity to do whatever. And I
19 want to finalize that with the conclusion that
20 defense counsel came to this Court, asked for
21 investigative help. All the investigative help
22 that was requested was granted. And your request
23 is overruled.

24 MR. ODOM: Judge, I would like to put
25 some evidence on in this regard. I need to bring

1 my investigator here. And I believe that my
2 investigator would be able to put on to the Court
3 his efforts that he employed and the amount of
4 efforts that he employed from the time of August
5 the 18th until the time we went to trial. I'd
6 also like to represent to the Court that from the
7 18th until the time of the trial I was by myself
8 on this case and could not physically prepare both
9 for the capital case, the case in chief, as well
10 as prepare for these extraneouses and that I would
11 have been unprepared to proceed on the case in
12 chief had I spent the time the Court is talking
13 about working on these extraneouses that even at
14 that point the Court had not ruled upon and I did
15 not know was coming into evidence and as a matter
16 of fact thought was not coming into evidence based
17 upon statements made by the Court. But I would
18 like to have an opportunity to put that
19 investigator on to establish what we were doing
20 during that time period.

21 I'd also -- and if the Court would allow
22 me time to do that, I'd like to put that on to
23 evidence --

24 THE COURT: That will be denied. The
25 issue is not so much how busy your investigator

1 was. The question is you should have approached
2 the Court requesting additional help if you
3 thought that was necessary to investigate. We're
4 not talking about extraneous other than Mr.
5 Copeland you have no objection to. That was in
6 the primary case. I think we're talking about one
7 extraneous offense and that is what we're focusing
8 on here today. So I don't see any need for your
9 investigator to testify how busy he was. All
10 you've got to do is come back to me and say I need
11 another investigator to look into this matter.
12 That was not done. Whether or not I would have
13 given you that, frankly, that would have depended
14 on what you presented to me at that time.

15 MR. ODOM: Well, Judge, in regards to the
16 one extraneous, I believe the evidence will show
17 that this extraneous is the equivalent of a case
18 in and of itself, the magnitude of which is the
19 size, almost the size of the case we just tried.

20 Also, I would remind the Court, that the
21 Court, when I asked for these issues on the 18th,
22 when this issue was presented to the Court, the
23 Court indicated to the State that it probably
24 would not let these extraneous in and that there
25 was no ruling by the Court at that time when I

1 asked for a continuance to investigate this
2 particular case.

3 THE COURT: I don't recall that aspect.
4 I do recall stating that I was making no ruling.
5 I told the State that they were under a burden to
6 prove to me beyond a reasonable doubt that this
7 extraneous was proper. And I specifically
8 remember telling you, Mr. Odom, that you are not
9 to take it in any way as a ruling that I'm not
10 going to let this extraneous in.

11 MR. ODOM: I do understand the -- my
12 understanding is the Court had made no ruling at
13 that point, and I specifically had a motion for
14 continuance at that point as well as a motion to
15 preclude the extraneous. And now here I am --

16 THE COURT: Well, I'll just rule that you
17 had proper notice.

18 MR. ODOM: I understand. I'm excepting
19 is all.

20 THE COURT: I understand. Anything
21 further?

22 Okay, here is what we're going to do.
23 We're going to start trial. We're going to bring
24 out the jury.

25 How many witnesses? Do we have these

1 witnesses available?

2 MR. VINSON: Yes, we can go ahead and get
3 them sworn.

4 THE COURT: How long is this going to
5 take the State, do you believe, to run through
6 those witnesses?

7 MR. VINSON: Hopefully we'll be finished
8 by 12:00 or 12:30.

9 THE COURT: Mr. Odom, how long do you
10 think it will take you to present any defense you
11 may wish to present?

12 MR. ODOM: Judge, I think that it
13 probably will take the afternoon to present mine
14 if we're going to finish by 1:30.

15 THE COURT: No hindrance on you
16 presenting your case, I'm not going to allow a lot
17 of repetition.

18 Let's be seated. Let's bring out the
19 jury.

20 (Jury in jury box).

21 THE COURT: Please be seated, ladies and
22 gentlemen.

23 Good morning, ladies and gentlemen of the
24 jury. We hope you had a nice weekend. I
25 apologize again to those who showed up here on

1 Friday. There were certainly unavoidable
2 circumstances. I hope you understand that.

3 We are going to move into the punishment
4 phase at this time. The State will have an
5 opportunity to call witnesses. The defense has an
6 opportunity, if it wishes, to call witnesses.
7 There is no obligation for them to do so.

8 Once we complete that phase, we'll have
9 the same scenario that we had earlier. The State
10 will have a chance to argue. The defense will
11 have a chance to argue, and then you will commence
12 your deliberations.

13 Let me remind you once again -- and I
14 certainly anticipate that you will be deliberating
15 today -- that we will not separate until you have
16 a verdict. So keep that in mind.

17 Let me ask, is the State ready?

18 MR. SMYTH: The State's ready, Your
19 Honor.

20 THE COURT: Is the defense ready?

21 MR. ODOM: Other than what I expressed
22 before, the issue that I raised before outside the
23 presence of the jury.

24 THE COURT: What does that have to do
25 with you being ready? I see. I'm sorry. Other

1 than that?

2 MR. ODOM: Other than that, we're ready
3 to proceed.

4 THE COURT: Very well, let's proceed, Mr.
5 Vinson.

6 MR. VINSON: Your Honor, at this time the
7 State will reoffer all the evidence admitted
8 during the guilt stage of the trial. And the
9 State would -- we have the witnesses in the
10 courtroom.

11 THE COURT: Are there any witnesses in
12 the courtroom?

13 Sir, are you a witness in this case?

14 A WITNESS: Yes, sir, I am.

15 THE COURT: You are a witness for the
16 State?

17 MR. SMYTH: If the Court wants to swear
18 them all in at once.

19 MR. VINSON: We only have one at this
20 time, Your Honor.

21 THE COURT: Very well. Let's call your
22 first witness.

23 MR. VINSON: That will be investigator De
24 los Santos.

25 (Witness is sworn).

1 THE COURT: Please be seated. Before you
2 start, the reason that we're coming out late,
3 because I try to be prompt, is we have been
4 working on a proposed charge and so instead of
5 having an hour of your time after we complete this
6 stage, we tried to do it now so that we can move,
7 as quickly as possible, move right from the
8 attorneys' argument to allowing you to deliberate
9 other than between the close of the punishment
10 trial. Once you hear all the evidence, I'd rather
11 move directly into argument and deliberations
12 versus having you sit back there for an hour or
13 two while we get the charge ready. I think now
14 we've got the charge 99 percent complete, so we
15 took that time this morning so we'd have a smooth
16 transition. That's why you were back there for an
17 hour. I appreciate that.

18 Mr. Vinson.

19 MR. VINSON: Thank you, Your Honor.
20
21
22
23
24
25

1
2 JIMMY DE LOS SANTOS,
3 was called as a witness by the State and, having
4 been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. VINSON:

7 Q. Sir, will you give your complete name for
8 the record.

9 A. My name is Jimmy De los Santos.

10 Q. And how are you employed?

11 A. I work for the Houston Police Department
12 in homicide, sex crimes division.

13 Q. How long have you been working with the
14 Houston Police Department?

15 A. Almost 15 years.

16 Q. Let me take your attention back to
17 November of 1995. Were you working with the
18 Houston Police Department at that time?

19 A. Yes, sir, I was.

20 Q. And will you tell the ladies and
21 gentlemen of the jury what your job was at that
22 time and what were your duty hours?

23 A. I work as an investigator in our sex
24 crimes division. My duty hours are 10:00 to 6:00
25 p.m.

1 Q. And did you have an occasion while you
2 were on duty to investigate an aggravated robbery
3 that was committed here in Harris County, Texas,
4 where a sexual assault was also committed?

5 A. Yes, sir, I was.

6 Q. And would that address location be on
7 Portal Street in Harris County, Texas?

8 A. Yes, sir.

9 Q. Can you tell the ladies and gentlemen of
10 the jury how you became involved in the
11 investigation of that offense?

12 A. I became involved in the investigation
13 when I was advised that the suspect had been
14 arrested in a possible home invasion where one of
15 the complainants, the lady in the house, had been
16 sexually assaulted.

17 MR. ODOM: Judge, I'm going to object to
18 the hearsay on the part of the witness at this
19 stage in regards to his testimony.

20 THE COURT: Sustained.

21 BY MR. VINSON:

22 Q. What was your involvement? Just tell us
23 your involvement.

24 A. I took a written statement from one of
25 the suspects which had been arrested.

1 Q. Okay. Now, how many suspects were
2 arrested?

3 A. At this time one.

4 MR. ODOM: Judge, I ask the jury to
5 disregard the prior statement that I made my
6 objection as to in regards to the hearsay.

7 THE COURT: Would you come up.

8 (Whereupon counsel approached the bench).

9 THE COURT: The jury will disregard that
10 last response.

11 MR. ODOM: I make a motion for mistrial.

12 THE COURT: That will be denied.

13 Approach the bench, please. You don't
14 need this on the record.

15 (Whereupon counsel approached the
16 bench).

17 BY MR. VINSON:

18 Q. Did you interview one of the suspects,
19 sir?

20 A. Yes, sir, I did.

21 Q. And can you tell us who you interviewed?

22 A. His name was Francisco Elvira.

23 Q. And while you were interviewing this
24 defendant, did you also learn who was the second
25 person?

1 A. Exhibit No. 1 is Elvira, and Exhibit No.
2 2 is Fugon.

3 Q. And the person in No. 2 is Fugon. His
4 name is Hector Fugon?

5 A. Hector Fugon.

6 Q. Now, during the course of your
7 investigation, did you have a conversation with
8 Mr. Fugon?

9 A. Yes, sir, I did.

10 Q. And not what he told you -- don't tell me
11 that -- but did you get a name from Mr. Fugon?

12 A. Yes, sir, I did.

13 Q. What name did you get?

14 A. David Balderas.

15 MR. ODOM: That's okay.

16 Q. David Balderas?

17 A. Yes, sir.

18 Q. Now, during the course of talking to Mr.
19 Balderas -- strike that -- Mr. Fugon, did you
20 attempt to contact Mr. Balderas?

21 A. Yes, sir, I did.

22 Q. And did you have any success?

23 A. No, sir, I was not successful.

24 Q. All right. You didn't have any further
25 involvement in this case; is that correct?

1 A. No, sir, I didn't.

2 MR. VINSON: I pass the witness, Your
3 Honor.

4 THE COURT: Thank you, Mr. Vinson. Mr.
5 Odom.

6 MR. ODOM: Did you offer the
7 photographs?

8 MR. VINSON: I didn't offer them.

9 MR. ODOM: I have no questions of this
10 witness.

11 THE COURT: Stand down. Thank you for
12 your testimony.

13 Call the next witness, please.

14 MR. VINSON: Your Honor, at this time the
15 State would call David Balderas.

16 (Witness is sworn).

17 MR. VINSON: May I proceed, Your Honor?

18 THE COURT: Please, Mr. Vinson.

19 MR. VINSON: Has he been sworn in, Your
20 Honor?

21 THE CLERK: Yes, sir.

22

23

24

25

1 DAVID BALDERAS,
2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. VINSON:

6 Q. Sir, would you give your name for the
7 record and spell your last name.

8 A. David Balderas.

9 Q. How old a person are you?

10 A. Thirty-three.

11 Q. And do you live here in Harris County,
12 Texas?

13 A. Yes.

14 Q. How far did you go in school?

15 A. Just to high school, just to 10th grade.

16 Q. To the 10th grade?

17 A. Yes.

18 Q. That seat has a tendency to rotate. I'd
19 like you to kind of hold it steady if you can.

20 A. Okay.

21 Q. Can you tell us what high school you
22 attended, sir?

23 A. Sam Houston.

24 Q. Sam Houston?

25 A. Uh-huh.

1 Q. And what type of work are you engaged in?

2 A. Body work, paint and body.

3 Q. How long have you been engaged in that
4 type of work?

5 A. About eight years.

6 Q. And what did you do before that?

7 A. I was a house painter.

8 Q. Do you know a man by the name of Reinaldo
9 Dennes?

10 A. Yes, sir.

11 Q. Is Reinaldo Dennes here in the courtroom
12 today?

13 A. Yes.

14 Q. Would you please point to Reinaldo Dennes
15 and tell us where he's seated and what he's
16 wearing?

17 A. Right over there. He's wearing a green
18 jacket, suit.

19 MR. VINSON: Your Honor, may the record
20 reflect that this witness has identified the
21 defendant?

22 THE COURT: The record will so reflect.

23 Q. (By Mr. Vinson) As of January of last
24 year, 1996, if you track back, how long had you
25 known Reinaldo Dennes?

1 A. Since about 1990.

2 Q. And how did you come to meet Reinaldo
3 Dennes?

4 A. I bought a house from him.

5 Q. And can you tell us where this house was
6 located?

7 A. The address?

8 Q. Yes, in the city, in the county, where?

9 A. It's in the county, off of Highway 6.

10 Q. And you purchased that home from him?

11 A. Yes, sir.

12 Q. Did you live in the home?

13 A. Yes, sir.

14 Q. After you purchased that home, did you
15 have any further contact with Reinaldo Dennes?

16 A. Yes, he did some of my jewelry repair.

17 Q. Did what?

18 A. Some of my jewelry repair.

19 Q. Did you ever have occasion to visit with
20 Mr. Dennes or did he have occasion to visit with
21 you?

22 A. Oh, yes, uh-huh.

23 Q. Isn't it a fact that he carried a second
24 lien on the property?

25 A. Oh, yes, yes, sir.

1 Q. Now, how did you see him on the other
2 occasions?

3 A. He repaired my jewelry, and I bought some
4 jewelry from him.

5 Q. He repaired your jewelry?

6 A. Uh-huh.

7 Q. What type of jewelry are we talking
8 about?

9 A. Chains, rings.

10 Q. Where would these repairs take place at?

11 A. I didn't know then. He was working for
12 somebody. I don't know where he did it, maybe at
13 his house. I don't know.

14 Q. But he would come to your house and pick
15 them up or just how did the transaction take
16 place?

17 A. Yes, he would come to the house.

18 Q. And how long did that go on?

19 A. A few years.

20 Q. Did you ever make purchases from him?

21 A. Yes, I bought some jewelry from him for
22 my wife.

23 Q. Did you ever have an occasion to go to
24 any business address that he held in this county?

25 A. Yes, sir.

1 Q. And what address did you go to?

2 A. I don't know the right address. I know
3 it was off of Richmond.

4 Q. It was on Richmond?

5 A. Uh-huh.

6 Q. Do you recall the name? Do you recall
7 the name of the building?

8 A. No, I don't.

9 Q. Okay, could you identify that building if
10 you were to see a picture of it?

11 A. Yes.

12 MR. VINSON: May I approach, Your Honor?

13 THE COURT: You may.

14 Q. (By Mr. Vinson) Let me show you what's
15 been admitted into evidence as State's Exhibit No.
16 16. Does that appear to be the building?

17 A. Yes, sir.

18 Q. Okay. And is that the building that you
19 were speaking about that's located on Richmond
20 Street?

21 A. Yes, sir.

22 Q. Will you keep your voice up, please. How
23 did you start going to that building?

24 A. I was going there to purchase some
25 jewelry and stuff, get jewelry repaired and stuff

1 like that.

2 Q. Now, do you know if the defendant had a
3 brother?

4 A. Yes, sir.

5 Q. Okay, and what was his brother's name, if
6 you recall?

7 A. Albert, Alberto.

8 Q. Albert?

9 A. Uh-huh.

10 Q. During the time that you were going to
11 the building there, did you go there to make
12 purchases or have repairs or just what?

13 A. Just that, just to get some -- buy some
14 jewelry and get some jewelry -- look at jewelry or
15 new stuff, just whatever he had there.

16 Q. How did you all get along together?

17 A. Pretty good.

18 Q. Did he ever work on a big lathe machine
19 in his office? Did you ever see a big lathe
20 machine in that office?

21 A. Yes, I saw one, but I never seen him use
22 it.

23 Q. What type of machine would he work out
24 of? When I'm talking about "he," I'm talking
25 about Reinaldo Dennes. What type of machine would

1 he work on, if any?

2 A. Little torches and little stuff to do
3 jewelry repair with, I guess. That's what I seen
4 him use.

5 Q. Now, around some time in October of 1995
6 were you still in contact with the defendant?

7 A. Yes.

8 Q. During that month did he approach you
9 about committing an offense?

10 A. Yes.

11 Q. And how did that come about?

12 MR. ODOM: Judge, I renew my objection
13 and ask may I have a running objection.

14 THE COURT: Certainly.

15 Q. (By Mr. Vinson) How did that come about?

16 A. He just asked me if I wanted to, if I
17 wanted to make any money and do something.

18 Q. Okay, he asked you if you wanted to make
19 any money?

20 A. Uh-huh.

21 Q. Is that all he asked you?

22 A. Until I asked what it was.

23 Q. Okay, you asked what it was?

24 A. Uh-huh.

25 Q. Now, when he asked you that, who was

1 present? Were you just there alone or who else
2 was present, if anyone else?

3 A. Just me and him.

4 Q. Just the two of you all?

5 A. Uh-huh, yes, sir.

6 Q. Where did this take place?

7 A. At his office.

8 Q. What did you think about making some
9 money?

10 A. I didn't, you know.

11 Q. Did you ask him how you were going to
12 make this money?

13 A. Yes, I did. You know, after we talked
14 about it, what was it we had to do.

15 Q. And did he tell you what you had to do?

16 A. Yes.

17 Q. What did he tell you?

18 A. He said that he knew somebody that might
19 have a large amount of jewelry in the house.

20 Q. He knew someone that had a large amount
21 of jewelry?

22 A. That may have.

23 Q. That may have. What else took place?

24 A. He just told me he was going to check
25 into it and let me know.

1 Q. What did you tell him at that time?

2 A. I told him to let me know what was the
3 deal on it, to let me know what was up.

4 Q. Okay. Did he -- did you ever get back
5 with him, or did he ever get back with you and let
6 you know what was up?

7 A. Yes, sir.

8 Q. And what was up?

9 A. That there was supposed to be a house
10 with jewelry in it, and if I wanted to go ahead
11 and either do it or find somebody to do it, to go
12 in there and get the jewelry.

13 Q. Did you want to go in and get the
14 jewelry?

15 A. No, not myself.

16 Q. How do you mean, saying go in and get the
17 jewelry? How was this going to be accomplished?

18 A. He was going to go in there and tie the
19 guy up and take his attache case.

20 Q. He was going to go up to the house and
21 knock on the door and let him know you were there
22 to take the jewelry?

23 A. I didn't know. Either I was going to do
24 it or I was going to get somebody to go in there,
25 knock on the door or go in, however, just to find

1 somebody to go in there and do this.

2 Q. Okay. But you declined to do that?

3 A. Myself.

4 Q. What happened next?

5 A. I started looking for somebody to do
6 that.

7 Q. Who started looking for someone to do it?

8 A. I did.

9 Q. Now, did you do it at the request of
10 Reinaldo Dennes or did you do it on your own
11 notion?

12 A. Well, after I said I wasn't going to do
13 it, I had to go out there and find somebody if I
14 wanted to get anything out of it.

15 Q. Who said that?

16 A. I figured that out by myself. I don't
17 think they would have been able to do it. I had
18 to get somebody to do it because I wasn't going to
19 do it.

20 Q. Did he ask you to find someone to do it?

21 A. Yes.

22 Q. And who did you -- strike that. Did you
23 go and look for someone to do it?

24 A. Yes.

25 Q. And who did you go to look for?

1 A. Hector Fugon.

2 Q. You didn't check the yellow pages or
3 anything like that?

4 A. No.

5 Q. What did you do?

6 A. Talked to my brother-in-law.

7 Q. Who is your brother-in-law?

8 A. Clifford Harwin.

9 Q. Clifford Harwin?

10 A. Uh-huh.

11 Q. Why did you go ask your brother-in-law?

12 A. Because he was into that, robbing and
13 stuff like that.

14 Q. Was your brother-in-law able to help you?

15 A. He just told me about this guy, this one
16 guy that probably would do it.

17 Q. Okay. Don't tell me what your
18 brother-in-law told you, but just after talking
19 with your brother-in-law, what did you do?

20 A. I talked with him, told him to tell his
21 guys to call me.

22 Q. You talked with your brother-in-law?

23 A. Right.

24 Q. After talking with your brother-in-law,
25 what did you do?

1 A. Contacted Ray and told him, "I think I
2 found somebody."

3 Q. And where did you contact Ray at?

4 A. His office.

5 Q. Was Ray receptive to that?

6 A. Yes.

7 Q. Did you know the name of the people at
8 that time?

9 A. I just knew their nicknames.

10 Q. You just knew what?

11 A. Their nicknames.

12 Q. What were their nicknames?

13 A. Honduras and Compadre.

14 Q. Compadre?

15 A. Uh-huh.

16 Q. And what's the other name?

17 A. Honduras.

18 Q. Honduras?

19 A. Uh-huh.

20 MR. ODOM: Can we approach the bench on
21 that, please?

22 THE COURT: You may approach.

23 (Whereupon counsel approached the bench).

24 MR. ODOM: I'm sorry, Judge. We were off
25 the record back in your office and I didn't get to

1 put on the record what I had voiced back in the
2 office and that is that I object to the
3 extraneouses in that I don't feel that the State
4 has shown the Court enough for the Court to make a
5 determination that it should be admissible beyond
6 a reasonable doubt based on the fact that it's all
7 uncorroborated testimony of a co-conspirator.

8 THE COURT: I already ruled on that
9 earlier.

10 MR. ODOM: That's not on the record,
11 Judge. I don't think we were on the record.

12 THE COURT: I ruled on it this morning
13 when I said I found sufficient evidence.

14 MR. ODOM: I just wanted my objection to
15 be there before we forgot.

16 (Testimony continued before the jury:).
17 BY MR. VINSON:

18 Q. So you had two names, Honduras and
19 Compadre. Those are street names. Did you later
20 learn their real names?

21 A. Not until a long time afterwards because
22 that's what they go by.

23 Q. Did you later learn their real names?

24 A. Yes.

25 Q. What was the real name?

1 A. Hector Fugon was Honduras.

2 Q. Hector Fugon. Did you ever learn the
3 real name of Compadre?

4 A. Francisco something.

5 Q. Okay. Could you recognize Francisco
6 something and Hector Fugon if you were to see
7 their pictures again?

8 A. Yes.

9 MR. VINSON: May I approach, Your Honor?

10 THE COURT: You may.

11 Q. (By Mr. Vinson) Let me show you what's
12 been marked for identification purposes as State's
13 Exhibit No. 1 and 2 and ask you can you identify
14 the people in those photographs?

15 A. Yes, sir.

16 Q. Okay. And who is State's Exhibit No. 1 a
17 picture of?

18 A. That's Francisco, Compadre.

19 Q. Compadre?

20 A. Uh-huh.

21 Q. Who is State's Exhibit No. 2?

22 A. That's Honduras, Hector Fugon.

23 Q. Honduras?

24 A. Yes, sir.

25 Q. Known as Hector Fugon?

1 A. Yes, sir.

2 MR. VINSON: Your Honor, at this time the
3 State will offer into evidence Exhibit 1 and 2 and
4 tender same to defense counsel for his
5 inspection.

6 MR. ODOM: We have no objection other
7 than the previous objection that we've raised.

8 THE COURT: Very well, State's 1 and 2
9 are admitted.

10 (Whereupon State's Exhibits Nos. 1 and 2
11 were admitted into evidence).

12 Q. (By Mr. Vinson) Now, did you ever meet
13 with Hector Fugon and Francisco?

14 A. Yes.

15 Q. And how did that come about?

16 A. Well, I had to meet them to tell them
17 what the deal was on this little job we had got.

18 Q. But I mean where did you all meet? Where
19 did you go?

20 A. We went to a Burger King off of Fondren
21 and Bellfort.

22 Q. Now, you met the two men, Hector Fugon
23 and Francisco at a Burger King?

24 A. Yes, sir.

25 Q. And who all was present, just the three

1 of you all?

2 A. Ray was there.

3 Q. Okay. And what happened then?

4 A. Just talked and he wasn't really --

5 Q. Let's take it a step at a time. When you
6 all went to the Burger King, how did you get
7 there? Did all of you go there together?

8 A. No. Me and Compadre and Honduras rode
9 together to Burger King.

10 Q. In whose vehicle?

11 A. Mine.

12 Q. And how did Ray Dennes get to the Burger
13 King?

14 A. He come in his car, his car.

15 Q. Was Ray Dennes alone, or did he have
16 someone else with him?

17 A. At that time he was alone.

18 Q. Where did this meeting take place,
19 outside in the parking lot, inside the Burger
20 King, or where?

21 A. Inside.

22 Q. What happened inside the Burger King?

23 A. We just all met. You know, he met them
24 and, you know, asked if they were ready, whatever.

25 Q. I need you to keep your voice higher and

1 to tell us what happened.

2 A. We just all met. We just shook hands.
3 He just asked if they were ready, you know.

4 Q. Who made the introduction?

5 A. I did.

6 Q. Who did you introduce? Did you introduce
7 those two men to the defendant?

8 A. Not like shake his hand or anything.
9 Just like I just pointed to him, told him who he
10 was and stuff, not by name, just said this is the
11 guy who is going to give us the job.

12 Q. These are the guys that's gonna do what?

13 A. This is the guy that's going to give us
14 the job. That's what I told Honduras, Compadre
15 when I introduced them to Ray.

16 Q. What happened then?

17 A. He wasn't too sure about the place where
18 it was at yet, Ray wasn't.

19 Q. Okay. What do you mean he wasn't too
20 sure about the place?

21 A. He didn't know which house it was.

22 Q. What happened then?

23 A. He said when he found out he would get
24 back with me.

25 Q. Now, had Ray ever taken you around in a

1 neighborhood there in the Fondren area?

2 A. Yes, sir.

3 Q. When did that happen? Did that happen
4 before the meeting with Fugon and Francisco or
5 after the meeting?

6 A. Before.

7 Q. And how did that come about?

8 A. Well, he just showed me the area kind of
9 and told me -- he wasn't sure which house, but he
10 took me down the street it was gonna be on.

11 Q. And what part of the City was this
12 located?

13 A. The southwest.

14 Q. Now, Ray told you that he wasn't sure of
15 the address at that time?

16 A. Right, correct.

17 Q. And then what happened?

18 A. That's when he told me he was going to
19 try to, you know, find out which house it was.

20 Q. And what were the two men who were with
21 you, what were they supposed to do in the
22 meantime?

23 A. Well, this was before, you know, he asked
24 me if I had ever been there before, he had took me
25 before. I had already contacted them and told

1 them what we were going to do, but we hadn't met
2 at Burger King yet before he showed me the area.

3 Q. So were the other two men supposed to
4 wait until they got the correct address?

5 A. Yes, sir.

6 Q. And who was Ray contacting? Was he
7 contacting you or was he making contact with the
8 other two men?

9 A. With myself.

10 Q. You were the go-between?

11 A. Yes, sir.

12 Q. And how would Ray contact you?

13 A. On my pager.

14 Q. Did Ray ever get back to you with the
15 right address?

16 A. Yes, sir.

17 Q. And when did this happen?

18 A. It was some time like in November, early
19 November -- yes, November.

20 Q. Now, when you got the right address, did
21 you ever go -- strike that.

22 When you got the address from the
23 defendant, did you personally go and check that
24 address out yourself, anything of that nature?

25 A. I didn't get the address, like the

1 number, but he like pointed to it.

2 Q. Okay.

3 A. So I kind of like took the guys by it and
4 pointed to them.

5 Q. Okay. When Ray got back to you -- what
6 I'm trying to get clear now is how was this
7 location determined? Did he tell you where it was
8 or just what happened?

9 A. Yes, he took me by there and he showed me
10 which house it was.

11 Q. He took you by there?

12 A. Yes, sir.

13 Q. And did he point out a house to you?

14 A. Yes, sir.

15 Q. Do you know what street that was located
16 on?

17 A. Portal.

18 Q. Do you remember the address or anything
19 of that nature?

20 A. No, sir.

21 Q. Okay, after you hear the location, what
22 happened next?

23 A. I contacted Honduras and Fugon -- I mean
24 Honduras and Compadre.

25 Q. Now, did Ray ever tell you how he knew

1 that there was diamonds in that home?

2 A. Some guy that came into his building or
3 that somebody knew inside the building, he flew
4 around with a bunch of jewelry, around the States.

5 Q. Did he tell you how he was supposed to
6 determine where this person lived?

7 A. He said he was going to follow him, have
8 him followed or something.

9 Q. He was going to follow him?

10 A. Yes, sir.

11 Q. Where?

12 A. From the airport. That's what he told
13 me, it's going to be from the airport.

14 Q. Okay, now, you have all this
15 information. You've got an idea of where this
16 house is located. What happened next?

17 A. When he found out that the guy was there,
18 because he never knew when the guy would be
19 there --

20 Q. Okay, what do you mean he never knew when
21 the guy was going to be there?

22 A. When he found out that the guy was there,
23 he called me and told me.

24 Q. Was that because the man traveled?

25 A. Yes, sir.

1 Q. Did Ray ever describe or tell you where
2 this diamond jewelry was supposed to be located
3 within this household?

4 A. No, sir, he didn't say where. He just
5 said what he was in.

6 Q. Did he ever tell you what it was supposed
7 to be in?

8 A. Yes, sir.

9 Q. What was it supposed to be in?

10 A. Black attache.

11 Q. Black attache bag. What happened next?
12 What happened in connection -- right now you've
13 located the house. You know the jewelry is in a
14 black attache bag. Do you have any idea when the
15 person attached to this bag is supposed to be
16 home?

17 A. I didn't know until he called me and told
18 me the guy was there.

19 Q. How did Ray contact you at that time?

20 A. He paged me.

21 Q. Was this day or night?

22 A. It was night.

23 Q. Okay. And what happened then when he
24 paged you? Did you return the page?

25 A. Yes, sir.

1 Q. Did you have a conversation with Ray?

2 A. Yes, sir.

3 Q. Okay. What did he tell you?

4 A. He said that the guy was at home.

5 Q. And what was supposed to take place at
6 that time?

7 A. I was supposed to tell the guys to go
8 ahead and go over there.

9 Q. Now, how did you maintain contact with
10 Fugon and Francisco?

11 A. By pager.

12 Q. And did they -- did you page him?

13 A. Yes, sir.

14 Q. Did they return your page?

15 A. Yes, sir.

16 Q. What happened after they returned your
17 page?

18 A. They told me they were going to take off
19 over there.

20 Q. You told them where to go, or did you
21 take them there?

22 A. I told them where to go.

23 Q. And how did they get there? Do you know?

24 A. No, sir, I don't.

25 Q. Then what happened?

1 A. They were gone for a long time. It was
2 real late.

3 Q. What do you mean a long time?

4 A. It was like about close to 10:00 when
5 they took off, and Ray paged me and asked me if
6 they had took off yet.

7 Q. What did you say?

8 A. I said yes.

9 Q. Now, did you actually see them take off
10 or did you just telephone them, talking with them
11 over the phone, or did they actually come to your
12 location or did you go where they were located?

13 A. I went to where they were located.

14 Q. Where were they located?

15 A. They were at some bar off of Cavalcade,
16 45.

17 Q. And you gave them the word at that time?

18 A. Yes, sir.

19 Q. And did they proceed to the location?

20 A. Yes, sir.

21 Q. Now, had you ever taken them there
22 before?

23 A. Yes, sir.

24 Q. So they knew where to go?

25 A. Yes, sir.

1 Q. How were you all going to communicate?
2 Did they have any plan after they get -- if they
3 got into the home and they got the diamonds, what
4 was supposed to happen then?

5 A. They had Ray's pager and they had my
6 pager and they were supposed to beep one of us
7 when they were done.

8 Q. About how long did you anticipate that if
9 this was a smooth operation, how long would it
10 have taken to get in and get the diamonds and get
11 out?

12 A. How long did I anticipate it to be?

13 Q. Yes, sir.

14 A. I thought it would take about an hour.

15 Q. Does that include driving time?

16 A. That was half.

17 Q. To get to the house, to get the diamonds?

18 A. Yes, sir.

19 Q. And then contact you or Ray. Is that
20 what you planned?

21 A. Yes, they were just supposed to just go
22 in and tie the guy up and take his bag and leave.

23 Q. Okay, now, how long had you known Fugon
24 and Francisco?

25 A. A few months, about maybe a year, maybe.

1 Q. So you did trust them?

2 A. Yes.

3 Q. What type of work did Fugon and Francisco
4 do on a daily basis?

5 A. Fugon was a mechanic, auto mechanic.

6 Q. He's a mechanic?

7 A. Uh-huh.

8 Q. And what type of work did Francisco do?

9 A. I know he worked at -- they say he worked
10 at Luby's. I'm not sure.

11 Q. Neither one of those people were in the
12 diamond business?

13 A. No.

14 Q. Now, did you -- after the initial call
15 from Ray to see if they were gone, I take it that
16 you told him they had departed?

17 A. Yes, sir.

18 Q. Did you get any further communication
19 from Ray?

20 A. No, sir.

21 Q. Did he ever call you to try to find out
22 where they were?

23 A. No, sir.

24 Q. Did you ever call Ray back?

25 A. Yes, sir.

1 Q. And for what reason did you call Ray
2 back?

3 A. Because the guys had came out of the
4 house already.

5 Q. What?

6 A. The guys had came out of the house they
7 were in already.

8 Q. I couldn't understand you.

9 A. The guys, they had came out of the house,
10 they had came out of the house already. That's
11 why I had called Ray.

12 Q. How did you know they came out of the
13 house already?

14 A. They paged me.

15 Q. They paged you, and you returned the
16 call?

17 A. Yes, sir.

18 Q. And how were you-all supposed to meet?
19 Did you have any rendezvous point where you were
20 supposed to meet?

21 A. Either they were going to beep me or beep
22 Ray, page me or page Ray, and whoever got it was
23 going to hook up with him.

24 Q. And did you hook up?

25 A. No.

1 Q. Why not?

2 A. Because it was the wrong house, nothing
3 was in there that was supposed to be in there, in
4 other words.

5 Q. Okay. Did you ever contact Ray and let
6 him know it was the wrong house?

7 A. Yes, sir.

8 Q. And how did that happen?

9 A. I called him when the guys called me and
10 told me that nothing like that was in there.

11 Q. Did you call Ray?

12 A. Yes, sir.

13 Q. What did you tell Ray?

14 A. I told him there was nothing in there,
15 nothing like that was in there.

16 Q. What did he say?

17 A. That I was lying.

18 Q. Did you make him aware that you were just
19 relying upon the word of Francisco and Fugon?

20 A. Yes, sir.

21 Q. How did he respond to that?

22 A. He said he'd find out in the morning.

23 Q. Did you have any further contact with
24 Fugon or Francisco?

25 A. Yes, sir, he paged me.

1 Q. Who paged you?

2 A. Fugon.

3 Q. And why did Fugon page you?

4 A. Because the police had picked up
5 Compadre.

6 Q. The police picked up Compadre and
7 Compadre was Francisco?

8 A. Yes, sir.

9 Q. And was that the same night or the
10 following morning or what?

11 A. It was like about four days later.

12 Q. About four days later when Francisco
13 contacted -- strike that -- when Fugon contacted
14 you?

15 A. Yes, sir.

16 Q. During that four days separation there,
17 had you tried to locate Fugon or Francisco?

18 A. No, I wasn't looking for them.

19 Q. Did you believe what they told you?

20 MR. ODOM: Objection as to whether he
21 believed them. That's speculation, his state of
22 mind in that regards --

23 THE COURT: It's overruled.

24 Q. (By Mr. Vinson) Did you believe what
25 Fugon and Francisco told you about nothing being

1 in the house?

2 A. Yes, sir.

3 Q. Why did you believe that?

4 A. Because Ray had called me -- hadn't
5 called me and told me anything different.

6 Q. He what?

7 A. Ray hadn't called me and told me anything
8 different.

9 Q. What do you mean Ray had not called you,
10 called you and told you anything different?

11 A. Like when I called him and asked him if
12 anything was missing out of there or was it the
13 house, he didn't really talk about it too much, so
14 I figured if something was in there and they were
15 lying, he would have told me.

16 Q. Now, you got a call about Francisco being
17 arrested; is that correct?

18 A. Yes, sir.

19 Q. And who called you?

20 A. Honduras, Fugon.

21 Q. Fugon. Did he make any special request
22 or anything?

23 A. He asked me to call Ray or for myself to
24 get him out of jail, to bond him out.

25 Q. Bond who out?

1 A. Compadre.

2 Q. Compadre. Why was he concerned about
3 getting Compadre out?

4 A. Because he said he was just starting to
5 talk. He was going to start saying stuff.

6 Q. Compadre was going to start saying
7 things. Did you talk with Ray Dennes about that?

8 A. Yes, I did.

9 Q. How did you do that?

10 A. I called him up. I called his office and
11 spoke with him.

12 Q. Did you speak with him about it?

13 A. Yes, sir.

14 Q. What did you tell him?

15 A. I told him that they had got arrested for
16 some things they had did inside the house.

17 Q. What did Ray do?

18 A. He told me those were my friends and for
19 me to handle it.

20 Q. And did you attempt to handle it?

21 A. No, sir, I didn't.

22 Q. What did you do after that?

23 A. I just stayed low.

24 Q. Did you have any further contact with
25 Ray?

1 A. No, I didn't.

2 Q. Did you have any further contact with
3 Fugon or Francisco?

4 A. Not after that.

5 Q. Did you have any reason to believe maybe
6 the diamonds were taken and you weren't getting a
7 share?

8 A. No.

9 Q. How were the proceeds that were supposed
10 to be taken, these diamonds, was there ever any
11 discussion about how the breakdown would go? Were
12 you supposed to get anything?

13 A. Yes, I was.

14 Q. What were you supposed to get?

15 A. That was going to be determined after it
16 was done.

17 Q. What about Fugon and Francisco? Were
18 they supposed to get anything?

19 A. That was going to be determined after it
20 was done also.

21 Q. So this was a deal you do it first and
22 then we'll discuss the breakdown?

23 A. Yes, sir.

24 Q. How much jewelry and diamonds were
25 supposed to be in that house?

1 MR. ODOM: If he has knowledge or was
2 told by one of the co-conspirators.

3 MR. VINSON: I'll rephrase it, Your
4 Honor.

5 THE COURT: Please.

6 Q. (By Mr. Vinson) Were you ever told
7 approximately how much was supposed to be in that
8 house by anyone that was involved in this offense?

9 A. Yes, sir.

10 Q. And who told you that?

11 A. Ray.

12 Q. How much was supposed to be in there?

13 A. He said about maybe about a half or a
14 whole, maybe.

15 Q. Anywhere from a half to a million?

16 A. Uh-huh.

17 Q. How did you feel about that, not knowing
18 what the share, the breakdown was going to be
19 until after the event had taken place?

20 A. I wasn't too worried about it.

21 Q. What if he hadn't given you anything?
22 What then?

23 A. Who?

24 Q. Ray hadn't given you anything. What was
25 going to happen then?

1 A. He wouldn't have done that.

2 MR. ODOM: Objection, Your Honor. It's
3 speculation what would have happened if the deal
4 wasn't cut. It's speculative in nature.

5 THE COURT: Sustained.

6 MR. VINSON: I'll withdraw it.

7 Q. (By Mr. Vinson) You personally never
8 came in contact with any of the victims out of the
9 house that was entered?

10 A. No, sir.

11 Q. Do you know how the location got mixed
12 up?

13 A. No, sir.

14 MR. VINSON: May I have just a moment,
15 Your Honor?

16 THE COURT: You may.

17 MR. VINSON: I'll pass the witness, Your
18 Honor.

19 THE COURT: Thank you. Mr. Odom.

20 MR. ODOM: Thank you.

21

22

CROSS EXAMINATION

23 BY MR. ODOM:

24 Q. Mr. Balderas, is that right?

25 A. Balderas.

1 Q. My name is Wendell Odom. We've never
2 met, have we?

3 A. No, sir.

4 Q. When did you get arrested for being
5 involved in this offense?

6 A. Never did.

7 Q. When did you get arrested on something
8 else that led you to talk to the D.A. about this
9 offense?

10 A. Never did.

11 Q. All right. How is it that the District
12 Attorney approached you initially?

13 A. My brother-in-law. He's a homicide
14 detective.

15 Q. Your brother-in-law is a homicide
16 detective?

17 A. Yes, sir.

18 Q. And he approached you initially?

19 A. We were talking over dinner.

20 Q. All right. And my question was he talks
21 to you or you talk to him first?

22 A. I talk to him.

23 Q. All right. And before this, you're
24 laying low, right?

25 A. Uh-huh.

1 Q. And you've decided that you don't want to
2 lay low any longer?

3 A. No, it had nothing to do with that.

4 Q. You just have a conversation with your
5 brother-in-law that wherein you tell him of your
6 involvement in this case?

7 A. No, not at all. I didn't involve myself
8 at all. I talked to him about something else that
9 pertains to what you all are doing now.

10 Q. You talked to him about a matter that's
11 not a matter that is this particular offense,
12 right?

13 A. Right.

14 Q. Is that another matter that involves the
15 law?

16 A. Yes, sir.

17 Q. And is it another matter that you were
18 involved in?

19 A. No, sir.

20 Q. It was just another matter you're talking
21 to him?

22 A. Right.

23 Q. It's not a matter that you have any
24 personal concern about?

25 A. A little bit.

1 Q. All right. What is your concern in the
2 first matter that you talked to your
3 brother-in-law about?

4 A. It was something I was approached about,
5 and I didn't want to be down with --

6 Q. Is it something that Ray Dennes
7 approached you in regards to?

8 A. No.

9 Q. It was something that someone else
10 approached you in regards to?

11 A. Yes.

12 Q. And did it involve criminal activity?

13 A. Yes.

14 Q. And did you talk to the person about the
15 criminal activity that they approached you in
16 regards to?

17 A. Yes.

18 Q. And what type of criminal activity was
19 it?

20 A. I'm not sure. It was kind of bad though.

21 Q. All right. Tell us a little bit. What
22 do you mean it was kind of bad?

23 A. Kind of like murder.

24 Q. All right. And when the person talked to
25 you about this kind of like murder matter, did you

1 tell him no?

2 A. Yes.

3 Q. But that concerned you a great deal, that
4 approach, so you talked to your brother-in-law?

5 A. Correct.

6 Q. Some way or another that conversation led
7 to the conversation of this matter?

8 A. Yes.

9 Q. All right. Did someone come to talk to
10 you about this homicide matter, this other matter
11 that was kind of like murder?

12 A. Yes.

13 Q. And when they talked to you about this
14 other matter, kind of like murder, then did it
15 come out that you may have been involved in this
16 burglary of this habitation, this home?

17 A. Correct.

18 Q. And who did you talk to about the
19 burglary of a home that you were involved in?

20 A. The first person I talked to about it?

21 Q. Uh-huh.

22 A. Some homicide investigators.

23 Q. And who was that?

24 A. I don't remember their name. I've got
25 their card in my wallet.

1 Q. Did you tell them about -- obviously at
2 some point you told them about your involvement in
3 this burglary?

4 A. In this what?

5 Q. What we call burglary of a habitation.
6 We call it that.

7 A. Yes, yes.

8 Q. You talked to him about that, right?

9 A. Well, they talked to me about it first.
10 I just went in for that murder kind of thing.
11 Then they mentioned the burglary thing to me, if I
12 was involved in it.

13 Q. Okay. And have you been charged on this
14 burglary case?

15 A. No.

16 Q. Are you going to be charged on this
17 burglary case?

18 A. I hope not.

19 Q. All right. Have you talked with anyone
20 about what your exposure is on being charged on
21 the burglary case?

22 A. Yes.

23 Q. Who did you talk to?

24 A. The D.A.'s.

25 Q. And when did that take place?

1 A. When I came in for questioning,
2 statement, whatever.

3 Q. All right. When you first talked to
4 homicide about the burglary of a habitation, when
5 was that?

6 A. Shoot, February.

7 Q. February?

8 A. '97.

9 Q. February of this year. Now, what do the
10 District Attorneys tell you that your deal could
11 be?

12 A. They didn't -- they don't make no deals.
13 They just said that anything I say I'd get
14 immunity to for a burglary.

15 Q. They told you that anything that you say
16 you're going to get immunity for being involved in
17 that burglary?

18 A. Correct.

19 Q. And what is your understanding that that
20 means?

21 A. That maybe I won't get charged.

22 Q. All right. What is your understanding of
23 immunity?

24 A. Like, you know, I won't get charged.
25 Probably, hopefully that's what -- nothing will

1 happen.

2 Q. See here is what bothers me is that
3 you're telling me you probably won't get charged,
4 but your understanding of immunity is that you
5 won't get charged?

6 A. I didn't say won't. I said maybe because
7 I don't know how that really works.

8 Q. Okay, your understanding is that you
9 don't have any deal?

10 A. I don't have any what?

11 Q. You don't have any deal?

12 A. Right.

13 Q. Right. But based upon what is testified
14 to, then you might get off these charges?

15 A. Correct.

16 Q. Now, as far as your activity with Ray
17 Dennes is concerned, you bought a house from Ray
18 Dennes, didn't you?

19 A. Yes, sir.

20 Q. That was back in '96?

21 A. No, sir.

22 Q. Back in '90?

23 A. Uh-huh.

24 Q. Okay. And both prior to that and after
25 that you did business with Ray Dennes, didn't you?

1 A. Yes, sir.

2 Q. And that is he repaired jewelry for you
3 and sometimes even would sell jewelry to you?

4 A. Yes, sir.

5 Q. Now, you don't know whether Ray Dennes
6 can work on a lathe or not, do you?

7 A. No, I don't.

8 Q. How many times did you go to his office?

9 A. A lot of times.

10 Q. How many?

11 A. A lot.

12 Q. And were you there during most of his
13 working hours when he was working?

14 A. Yes, sir.

15 Q. So you were there kind of eight hours a
16 day?

17 A. Not that much; but, you know, I was there
18 during the normal hours, but I wasn't there every
19 day.

20 Q. You went there every day?

21 A. No, I wasn't there every day.

22 Q. But you really don't know whether he can
23 or can't work on a lathe, do you?

24 A. No, sir.

25 Q. Also you identified one of these persons,

1 Compadre, as Francisco?

2 A. Yes, sir.

3 Q. All right. Do you know Francisco
4 Rojas --

5 A. No, sir.

6 Q. -- someone that works for Ray there at
7 that office you hang out in?

8 A. Yes, I've seen him.

9 Q. That's not the same person, is it?

10 A. No, sir.

11 Q. It's a totally different person?

12 A. Yes, sir.

13 Q. When did you tell the homicide detectives
14 about your involvement and Ray's involvement in
15 this burglary?

16 A. When they asked me to come in.

17 Q. All right, when was that?

18 A. I want to say like it was after Easter.

19 Q. It was before August the 13th though,
20 wasn't it?

21 A. Yes, sir.

22 Q. And you told them what you told this
23 Court today, didn't you, before August the 13th?

24 A. Yes, sir.

25 Q. Now, when Ray approached you to do this,

1 you said that you didn't know anyone right off the
2 top of your head that would go in and do this
3 job? Do you recall that testimony?

4 A. Did I say what? Did I know anybody?

5 Q. Yes, and you didn't know anybody when he
6 first asked you to do this burglary or this
7 robbery?

8 A. I just said I wasn't going to do it.

9 Q. Right, and then you said you had to ask
10 your brother-in-law because you didn't know
11 anybody?

12 A. Yes, I said I was going to ask my
13 brother-in-law. I tell him that -- that's what I
14 said to myself or whatever.

15 Q. And your brother-in-law introduced you to
16 these two people, Compadre and Honduras?

17 A. Yes, sir.

18 Q. Now, you didn't know Compadre and
19 Honduras prior to that, did you?

20 A. Yes, I did.

21 Q. So you already knew them, it is just that
22 your brother-in-law is the person that told you
23 that these are the people that you need to talk
24 to?

25 A. No, he was doing that, too, my

1 brother-in-law was; but he was locked up. And
2 when he had been calling collect from the county,
3 he gave me their number and told me how to get
4 hold of them.

5 Q. Yes, sir. Okay, but you had known them
6 ahead of time?

7 A. Yes, sir.

8 Q. Now, is there any record that you have of
9 telephone calls that you made or that Ray made to
10 you?

11 A. Maybe my old car phone bills.

12 Q. All right. Do you have any such
13 telephone calls that you know of?

14 A. Do I have it in my possession?

15 Q. Yes.

16 A. Probably not because I throw all that
17 away.

18 Q. And, Mr. Fugon said that he was going to
19 spill the beans if Ray, Reinaldo Dennes, didn't
20 bail him out, correct?

21 A. No, it was Compadre. He was already in
22 jail.

23 Q. Compadre was going to spill the beans,
24 tell everybody, if Ray didn't bail him out, right?

25 A. Ray or me.

1 Q. Ray never bailed him out, did he?

2 A. No.

3 Q. And Compadre and Fugon never spilled the
4 beans, did they?

5 A. On Ray?

6 Q. Yes.

7 A. I'm not too sure. Well, the homicide
8 investigators told me that my name was in there,
9 so was his.

10 Q. All right. Now, told you that your name
11 was in there?

12 A. Uh-huh.

13 Q. So we've got you that are basically the
14 only one that's testifying that Ray is involved in
15 this, right?

16 A. Uh-huh, yes.

17 Q. And you, depending on how you testify
18 today, might get off this, right?

19 A. Yes.

20 Q. And you didn't step forward and talk to
21 anybody about this until after Ray was already
22 arrested, did you?

23 A. Correct.

24 Q. Ray was never charged in this case, was
25 he, that you know of?

1 A. No, sir, not that I know of.

2 MR. ODOM: Pass the witness.

3 THE COURT: How much longer do you think
4 your redirect will be?

5 MR. VINSON: It will be very short.

6 THE COURT: Proceed.

7

8 REDIRECT EXAMINATION

9 BY MR. VINSON:

10 Q. Now, do you recall when you spoke with me
11 and Don Smyth? Do you recall that?

12 A. Yes, sir.

13 Q. Okay, and what was that, a couple of
14 weeks ago?

15 A. Yes, sir.

16 Q. The first time we ever laid eyes on you;
17 is that correct?

18 A. Correct.

19 Q. The first time Don Smyth ever saw, you,
20 correct?

21 A. Correct.

22 MR. VINSON: Can I have just a moment.

23 Q. Now, why did you come forward on this?
24 Why did you come forward?

25 A. Come forward?

1 Q. Since that became an issue, why did you
2 come forward? There had to be a reason.

3 A. Because my brother-in-law told his
4 captain about what I knew, and they drug me in.

5 Q. I mean you didn't voluntarily just come
6 down here, did you?

7 A. No.

8 Q. We had to go look for you; is that
9 correct?

10 A. Yes.

11 Q. You were served a subpoena; is that
12 correct?

13 A. Yes.

14 MR. VINSON: I have nothing further, Your
15 Honor.

16 THE COURT: Mr. Odom.

17
18 RECROSS EXAMINATION

19 BY MR. ODOM:

20 Q. You didn't mention Ray Dennes until you
21 were in trouble, did you?

22 A. To who? To the D.A.'s?

23 Q. Uh-huh.

24 A. True.

25 MR. ODOM: Pass the witness.

1 MR. VINSON: I don't have anything
2 further, Your Honor.

3 Is this witness to be excused?

4 MR. VINSON: Yes.

5 THE COURT: Any objection?

6 MR. ODOM: On call, Judge.

7 THE COURT: Thank you very much for your
8 testimony. You may be excused.

9 Ladies and gentlemen, it's a little after
10 12:15. We're going to break for lunch. One hour
11 and 15 minutes, please. Let's try to have them
12 back by 1:30.

13 We stand in recess.

14 (Noon recess).

15 THE COURT: Let the record reflect the
16 State is present, that the defendant and his
17 counsel is present. The jury is not. Other than
18 the minor modifications that we've just discussed,
19 Mr. Odom, do you have any further objections?

20 MR. ODOM: Yes, Judge. Judge, we made
21 the two minor modifications --

22 THE COURT: Who is taking care of those?
23 Who is going to run downstairs to make sure it
24 gets done? Is somebody in charge of doing that?

25 MR. VINSON: Your Honor, what I can --

1 THE COURT: Can you just call down
2 there?

3 MR. VINSON: He's going to be starting
4 with the evidence, and I can run down and take
5 care of it.

6 THE COURT: What additional --

7 MR. ODOM: The only other request I
8 would make that I didn't make at the time I made
9 my other objections previously -- of course, I
10 renew those objections -- is that we feel that the
11 State's burden to prove Issue No. 3 exists as well
12 as the State's burden to prove Issues No. 1 and
13 No. 2, that the State has the burden of proof and
14 it would go as to mitigating issues as well as to
15 the other two special issues.

16 THE COURT: Didn't we just say we were
17 going to add a general paragraph with regard to
18 the State's burden?

19 MR. SMYTH: It's a one phrase sentence,
20 Judge.

21 THE COURT: It doesn't have any
22 applicability as far as specifically to any
23 particular issue?

24 MR. VINSON: No, sir. There the State
25 doesn't have any responsibility on Issue No. 3.

1 THE COURT: That's fine. We're going to
2 add that one sentence.

3 Wasn't there something additional, Mr.
4 Odom? Maybe not with regard to the charge.

5 MR. ODOM: Not with regard to the
6 charge. Judge, my point, I believe that in the
7 application parts of the special issue there is a
8 comment that the State has a burden of proof as to
9 Issue No. 1, the State has a burden as to Issue
10 No. 2. And there is nothing that relates to Issue
11 No. 3, and that is what I'm objecting to as it's a
12 constitutional argument that I make.

13 THE COURT: That's overruled. Why don't
14 you give me your other two motions?

15 MR. ODOM: These are my copies of them.
16 They were filed back in June, I believe.

17 THE COURT: We've never ruled on these?

18 MR. ODOM: No, Judge, they're trial
19 motions. Maybe you have ruled on them, but I
20 don't imagine that you have. They only would be
21 applicable at the punishment.

22 THE COURT: Motion to require the Court
23 to rule upon the objections made during final
24 arguments is granted.

25 Motion to limit the jury argument of the

1 State at the punishment stage.

2 Did the State look over that?

3 MR. SMYTH: Judge, I think it's the same
4 things we're supposed to argue, and we don't
5 intend to do anything other than that.

6 THE COURT: In any way impugn the
7 character of defense counsel.

8 Motion to limit the jury argument of
9 State as to punishment as to what's required per
10 the statute. That's granted. I think it pretty
11 well tracks that.

12 MR. ODOM: Yes, sir. It's supposed to.

13 THE COURT: All right. 30 minutes on
14 argument. And, again, once the testimony is
15 completed, I'll give you another opportunity to
16 let me know if you believe the charge is still in
17 order after we hear additional testimony.

18 Let's proceed then. Okay. Let's call
19 out the jury.

20 (Jury in jury box).

21 THE COURT: Please be seated. State,
22 call your next witness.

23 MR. SMYTH: Your Honor, the State would
24 call Danny Tsang.

25 Would you like to have both of them sworn

1 at the same time, Judge?

2 (Witnesses are sworn).

3 THE COURT: The rule has been invoked
4 which means the witnesses may not remain in the
5 courtroom while other witnesses are testifying.
6 While you're outside the courtroom you're not to
7 discuss this case with anyone other than your
8 attorney.

9 All right, we'll call you in very
10 shortly.

11 Which one is going to testify first?

12 Okay, Mrs. Tsang, would you step outside
13 the courtroom.

14 THE COURT: Please be seated.

15 MR. SMYTH: May I proceed?

16
17 DANNY TSANG,
18 was called as a witness by the State and, having
19 been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SMYTH:

22 Q. Sir, would you please state your name and
23 speak loud enough for the entire jury panel to
24 hear you.

25 A. Okay. Danny --

1 THE COURT: Sir, about that far away.

2 THE WITNESS: Danny, D-a-n-n-y; Tsang,
3 T-s-a-n-g.

4 Q. Okay. Mr. Tsang, do you live in Harris
5 County, Texas?

6 A. Yes, I do.

7 Q. How long have you lived in Harris County,
8 Texas?

9 A. About 13 years.

10 Q. Thirteen years. Do you own a home here
11 in Houston, Harris County, Texas?

12 A. Yes, I do.

13 Q. And when did you buy that house?

14 A. 1975, about May. I move in about July.

15 Q. And is that home that you bought in May
16 and moved in in July of 1995, is that on Portal
17 Street here in Houston, Harris County, Texas?

18 A. Yes, sir.

19 Q. Were you living in that house back on
20 Thursday, November the 16th, 1995?

21 A. Yes.

22 Q. Did you live there by yourself or did
23 other people share the home with you?

24 A. With my wife and my daughter.

25 Q. Okay, and what's your wife's name?

1 A. Christina Tsang --

2 Q. Excuse me?

3 A. -- and Susan, Susan Tsang, my daughter's
4 name.

5 Q. Christina is the lady that just left a
6 second ago?

7 A. Yes, sir.

8 Q. Back on Thursday night approximately
9 10:30, 10:35, were you in your home?

10 A. Yes, sir.

11 Q. Can you tell the ladies and gentlemen of
12 the jury exactly what you were doing in your home
13 at 10:30, 10:35 on that Thursday night, November
14 the 16th, 1995?

15 A. Watching TV.

16 Q. Do you recall what you were watching?

17 A. Nightline.

18 Q. Nightline?

19 A. Nightline.

20 Q. All right. While you were there watching
21 Nightline, did anything unusual happen or cause
22 you to quit watching TV?

23 A. Yes.

24 Q. And what was that?

25 A. Someone tapped on my back window, on the

1 back of the house.

2 Q. I guess are you in the den area of your
3 home?

4 A. Yes, the living room.

5 Q. Living room. Do you have great big floor
6 to ceiling windows across the back of your house?

7 A. Yes.

8 Q. Your house on Portal Street, does it back
9 up to something? Instead of backing up to other
10 houses, is there something right behind your
11 house?

12 A. A bayou.

13 Q. A bayou?

14 A. Yes.

15 Q. Okay. And that bayou runs the whole
16 length of the street behind your house?

17 A. Yes, sir.

18 Q. You hear something on your back window.
19 Is that inside your fence?

20 A. Say that again, please.

21 Q. You say you heard some tapping on your
22 back window?

23 A. Yes, sir.

24 Q. You have a fence around your house?

25 A. Yes, I do.

1 Q. A fence between your house and the bayou?

2 A. Right.

3 Q. Okay. When you hear the tapping, what do
4 you do?

5 A. I was kind of lying down on the couch,
6 and I stood up --

7 Q. Okay, when you stood up --

8 A. -- and looked outside.

9 Q. When you stood up and looked outside, did
10 you see anything?

11 A. I saw two men pointing their guns at me.

12 MR. ODOM: Your Honor, I would renew my
13 objection that I posed before and ask that I have
14 a running objection on this issue.

15 THE COURT: Very well.

16 MR. ODOM: I would also object that the
17 prejudicial value outweighs the probative value of
18 the evidence.

19 THE COURT: That's overruled.

20 BY MR. SMYTH:

21 Q. Two people are pointing a gun at you.
22 Are they still outside your house?

23 A. Yes.

24 Q. What happened when these two guys pointed
25 guns at you?

1 A. They pointed at the back door and
2 demanded me to open the door.

3 Q. Okay. Now, is your wife and daughter in
4 the home at the same time as you are?

5 A. Yes, they were.

6 Q. Are they in the living room there with
7 you?

8 A. They were sleeping.

9 Q. They were sleeping. Are they sleeping in
10 another part of the house then?

11 A. Yes.

12 Q. So how close are you to these men with
13 guns when they tap on the back window?

14 A. Almost seven, eight feet away.

15 Q. Okay. Do you go to the back door and
16 then let them in?

17 A. Yes.

18 Q. Is there some reason why you didn't just
19 run out the front door?

20 A. Well, I was afraid they're going to shoot
21 me.

22 Q. Do you know the names of those two men?

23 A. Now I do.

24 Q. Okay. Do you now know the names of those
25 two men?

1 A. Yes.

2 Q. Could you tell the ladies and gentlemen
3 of the jury what the names of the two men were?

4 A. One is Fugon and the other one is
5 Francisco.

6 Q. If I showed you pictures of those people,
7 would you recognize them?

8 A. Yes, sir, I do.

9 MR. SMYTH: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 MR. SMYTH: Thank you, sir.

13 Q. Let me show you what's been marked and is
14 in evidence as State's Exhibit No. 1 and ask you
15 if you recognize that person as well as State's
16 Exhibit No. 2?

17 A. This is Francisco and this is Fugon.

18 Q. You pointed to State's Exhibit No. 1.
19 That is -- which one is the one right here?

20 A. One, yes.

21 Q. Who is that?

22 A. Francisco.

23 Q. And State's Exhibit No. 2?

24 A. Fugon.

25 MR. SMYTH: Your Honor, at this time may

1 I publish these photos to the jury?

2 Q. No. 1 is Francisco. Was he a shorter,
3 heavier set guy?

4 A. Yes, shorter, heavier.

5 Q. And Fugon?

6 A. Taller, skinnier.

7 Q. Now, you let both of these two folks in
8 your house, State's Exhibit No. 1, Francisco and
9 State's Exhibit No. 2, Fugon; is that correct?

10 A. Yes.

11 Q. Okay. What's the next thing that
12 happened after you let these men in your house?

13 A. They pushed me down on the floor.

14 Q. Were both of them involved in pushing you
15 down?

16 A. Yes, pointing the gun on my head.

17 Q. Both of them pushed you down and pointed
18 guns to your head?

19 A. Yes.

20 Q. Did they get you on the floor of your
21 living room?

22 A. Yes.

23 Q. Do they say anything to you at that time,
24 or do you --

25 A. No, Fugon went into one of the rooms and

1 pull off the power cord from the iron, and then
2 they tie me up, tie my hands behind my back.

3 Q. Okay. After you've got your hands tied
4 behind your back, do either one of these men say
5 anything to you? Do they tell you why they're
6 there or what they're looking for?

7 A. Fugon said, kept on asking me where the
8 diamonds are.

9 Q. Okay, he asked you where the diamonds
10 are?

11 A. Yes, where the diamonds are.

12 Q. Did he do that more than once?

13 A. Yes.

14 Q. What did you tell him about the diamonds?

15 A. I said, "I have no diamonds. What you
16 guys talking about?"

17 Q. Okay. After you told him there's no
18 diamonds, what are you talking about, did he leave
19 you?

20 A. No.

21 Q. He stayed in the house?

22 A. Yes.

23 Q. What did he do?

24 A. Well, he kept on asking me for the
25 diamonds or the jewelry. And then he asked me,

1 "Did you go to New York yesterday?"

2 Q. Did you go to New York yesterday?

3 A. Right.

4 Q. What did you say to that?

5 A. I said no.

6 Q. Did you ever figure out, figure out why
7 they're asking you about the diamonds?

8 A. They intend to rob a jewelry store.

9 MR. ODOM: Objection unless the witness
10 knows, Your Honor.

11 THE COURT: Sustained.

12 Q. (By Mr. Smyth) Let me just ask you
13 this: You're sitting there. You don't have any
14 diamonds, right? Did you ever tell them you're
15 not a jeweler?

16 A. Yes, I did.

17 Q. Do you have any people in the jewelry
18 business on your street?

19 A. Yes.

20 Q. Specifically, are there any jewelers,
21 jewelry people within a couple of houses of you?

22 A. Yes, two doors down to my right, to my
23 right.

24 Q. Two doors down. So if I'm in your house
25 looking out the front door, not the next house but

1 the house after that there is jewelry people live
2 there?

3 A. Correct.

4 Q. Do you know the names of the people that
5 live there?

6 A. His name Albert. I don't know his first
7 name.

8 Q. Do you know his last name?

9 A. No.

10 Q. How about his wife? Do you know his
11 wife's name?

12 A. Rachel first name.

13 Q. First name is Rachel?

14 A. Rachel.

15 Q. And he's in the diamond business?

16 A. I knew he was in the jewelry business. I
17 don't know what kinds of jewelry.

18 Q. When you realized you have people in the
19 jewelry business in your neighborhood, did you say
20 anything about that to Mr. Fugon?

21 A. Yes, I told him, I told him, "You got the
22 wrong house."

23 Q. You've got the wrong house?

24 A. Yes.

25 Q. Did they -- after you told him, you've

1 got the wrong house, did they leave?

2 A. No.

3 Q. Okay, what did they do?

4 A. Then they ask me who else is in the
5 house.

6 Q. Who else is in the house?

7 A. Yes, who else is in the house.

8 Q. What did you say?

9 A. Well, I told them my wife and my
10 daughter, and they're sleeping.

11 Q. Okay. What happened after you told them
12 your wife and daughter were in the house?

13 A. Well, I guess they didn't want to, you
14 know, wake them up and make sure -- you know, I
15 guess they want to know where everybody was.

16 Q. Okay, so what happened?

17 A. And so I think he wanted -- Fugon, he
18 want to, you know, wake my wife and my daughter
19 up. Well, let me do it because, of course, they
20 are going to be scared anyway. So I said, let me
21 wake them up.

22 Q. Excuse me, excuse me, Mr. Tsang. Let me
23 do this real slow just step by step.

24 A. All right.

25 Q. He finds out somebody else is in the

1 house and he's going to wake them up. You just
2 asked him if you could wake your wife and daughter
3 up instead of him; is that right?

4 A. Yes.

5 Q. So after you communicate that to Fugon,
6 what do you do? Just what did you do next, just
7 one step at a time?

8 A. So I guess he said okay. So I walk in to
9 one of the bedrooms where my wife and daughter
10 were sleeping.

11 Q. Okay.

12 MR. ODOM: Judge, at this point I'm going
13 to pose another objection. I'd like to do it
14 before the Court if possible.

15 THE COURT: All right.

16 (Whereupon counsel approached the bench
17 outside the hearing of the jury).

18 MR. ODOM: Judge, I believe they're going
19 to go into a rape at this point, and I think that
20 is beyond an extraneous offense, the rape
21 business. I think the only purposes of them going
22 into this sexual assault is to add a prejudice to
23 the original robbery. I think it is beyond the
24 scope of the defendant's activity. I think its
25 purpose is to inflame the jury and I think that it

1 is an extraneous of the extraneous, if you will,
2 and as such I object to it and I don't think it
3 should be admissible.

4 THE COURT: Mr. Smyth.

5 MR. SMYTH: Judge, I think we should be
6 allowed to show everything that happened as a
7 result of this defendant's directing those folks
8 to go to that house. You know, that's part of
9 once he puts people out to doing things, he may
10 lose control over what he's set in motion. And I
11 think that's part of the danger of the type of
12 business, criminal activities he engages in.

13 MR. ODOM: He certainly has the right to
14 establish the extraneous offense. But when these
15 people take it on their own to commit other
16 offenses, I don't think unless the State can show
17 that there was some sort of knowledge on my
18 client's part or anticipating of the last part of
19 that, it's only prejudicial.

20 THE COURT: Sustained.

21 MR. SMYTH: May I have a moment, Judge?

22 THE COURT: Sure.

23 MR. SMYTH: Thank you, Judge.

24 BY MR. SMYTH:

25 Q. Were you able to go to the bedroom where

1 your daughter and wife were sleeping?

2 A. Yes.

3 Q. Okay, did you still have your hands tied
4 behind your back?

5 A. Yes.

6 Q. Did you wake up your wife and daughter
7 and explain what's going on?

8 A. Yes. I just woke my wife up and told
9 them, "We are being robbed."

10 Q. Okay. Fine. At that point had Fugon or
11 Francisco taken any property from you?

12 A. Not yet.

13 Q. Okay. Did they tie your wife and
14 daughter up at that time, just a simple yes or no?

15 A. No.

16 Q. Okay. Did they leave you in the room
17 with your wife and daughter or did they take you
18 some place else?

19 A. No, they took me to the master bedroom.

20 Q. Did you still have your hands tied behind
21 your back?

22 A. Yes, that's correct.

23 Q. Did they ever untie your hands from
24 behind your back?

25 A. I'm sorry?

1 Q. Did Francisco or Fugon ever untie your
2 hands from behind your back?

3 A. At one point, yes, but they untie me and
4 tie me up again better --

5 Q. Okay.

6 A. -- and tie my feet up the second time.

7 Q. Okay. So they tied you up better than
8 they tied you the first time?

9 A. Right.

10 Q. While they're in the house, do they look
11 for any property or take any property?

12 A. Well, they look for diamonds again.

13 Q. What did they do to look for diamonds in
14 your house?

15 A. Just ransacked the house pretty much.

16 Q. They ransacked the whole house?

17 A. Yes.

18 Q. Did they look in the closets?

19 A. Closets, drawers, under the bed, pillows,
20 return air duct, just the whole house.

21 Q. They opened up the return air duct of
22 your house and looked in there?

23 A. Right.

24 Q. Did they find any diamonds in there?

25 A. No.

1 Q. How long did these folks stay in your
2 house?

3 A. Two and a half hours.

4 Q. Two and a half hours?

5 A. Yes.

6 Q. Was there some time that they were in
7 your house that you weren't present with them?

8 A. Well, most of the time I stay on my bed
9 in the master bedroom. And they took my wife over
10 the house, I guess, you know, tried to tell her,
11 you know, get the jewelry, get the diamond out.

12 Q. You could hear this from your position on
13 the bed?

14 A. Yes.

15 Q. So after they put you on the bed, then
16 they led your wife around the house trying to get
17 her to show them where the diamonds were?

18 A. Right.

19 Q. Okay, did they ever leave your house?

20 A. Did they ever leave the house?

21 Q. At some point in time they left, I guess;
22 is that right?

23 A. Yes, just like five minutes after 1:00.

24 Q. Five after 1:00?

25 A. Five minutes after 1:00 next morning.

1 Q. So that means over into Friday morning
2 they're still there?

3 A. Yes.

4 Q. Did they ever take any of your property
5 when they left your house?

6 A. They did.

7 Q. Don't tell me an itemized list of
8 everything they took, but what kind of things did
9 they take?

10 A. You know, some jewelry, my watch, the
11 camera, my daughter's jewelry.

12 Q. Your daughter's jewelry?

13 A. Yes, a small amount, some collectible
14 coins, my jacket, my wife's jackets, a gun, and
15 the whole stereo system.

16 Q. Okay.

17 A. Some decoration, you know, stuff.

18 Q. Did somebody come and pick them up?

19 A. No. The reason they stayed there so long
20 because they kept on telling -- at one point
21 telling us, my wife and I, they're waiting for
22 someone to pick them up.

23 Q. Okay, did a person ever come and pick
24 them up as far as you know?

25 A. No.

1 Q. How did they leave? Did they just walk
2 out the front door or the back door?

3 A. From the garage.

4 Q. Okay. When they left the garage, did
5 they take anything with them?

6 A. They took my car.

7 Q. Okay. Did they load all your property in
8 your car?

9 A. Right.

10 Q. And then they drove off?

11 A. Before they left, they unplug all the
12 phones, cut all the phones, you know, make sure we
13 couldn't call the police quick, I guess.

14 Q. They cut your phone lines before they
15 left?

16 A. No, they didn't cut the phone lines, but
17 they took all the phones, all the phones.

18 Q. While you were there, did this event, did
19 it scare you?

20 A. Oh, yes, of course.

21 Q. What were you afraid of?

22 A. They're going to kill us.

23 Q. Do you still live in that house?

24 A. Yes, I do.

25 Q. And you just bought that house or just

1 moved in in July?

2 A. Yes.

3 Q. Do you take any additional security
4 precautions now that you have had this experience?

5 A. Yes, we get a, what, panic button. Now
6 we have -- it's getting a little better. But
7 right after the incident we were very, very
8 scared. And especially at night my daughter
9 constantly look to the back window and my daughter
10 used to wear the panic button on her neck, you
11 know, as to how scared she was, probably for four
12 or five months.

13 Q. How old was your daughter at the time
14 this happened?

15 A. Nine.

16 Q. Nine years old?

17 A. Yes.

18 MR. SMYTH: Pass the witness, Your Honor.

19 THE COURT: Mr. Odom.

20 MR. ODOM: No questions, Your Honor.

21 THE COURT: You may step down. Thank you
22 for your testimony.

23 MR. SMYTH: Your Honor, the State would
24 call Mrs. Christina Tsang.

25 MR. ODOM: Judge, I would object. It is

1 repetitious and it will be prejudicial and any
2 prejudicial value would outweigh its probative
3 value.

4 THE COURT: That will be overruled, but I
5 will instruct the State to not be repetitious in
6 the questioning. Ask something new.

7 MR. SMYTH: Thank you, Your Honor

8
9 CHRISTINA TSANG,
10 was called as a witness by the State and, having
11 been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SMYTH:

14 Q. Ma'am, would you please state your name
15 and speak loud enough so the entire jury panel can
16 hear you?

17 A. My name is Christina, last name Tsang,
18 T-s-a-n-g.

19 Q. Ms. Tsang, are you a married woman?

20 A. Yes, I am.

21 Q. Is the man that just preceded you on the
22 stand, Danny Tsang, your husband?

23 A. That's correct, yes.

24 Q. Mr. Tsang has given us a great deal, told
25 us all about what happened on November the 15th

1 and 16th, 1995. I'll skip through most of that
2 and just skip to information that has not been
3 heard by this jury before. You were in the house
4 when somebody came in and robbed you, correct?

5 A. That's correct.

6 Q. Okay. Did the people that came in, would
7 you recognize them if you saw them again?

8 A. Yes.

9 MR. SMYTH: May I approach the witness,
10 Your Honor?

11 THE COURT: Yes.

12 Q. (By Mr. Smyth) I'll show you, ma'am,
13 what's been marked as State's Exhibit No. 1 and
14 No. 2 and ask if you recognize those individuals?

15 A. Yes, I do.

16 Q. Do you now know their names?

17 A. Yes.

18 Q. State's Exhibit No. 1, do you know what
19 his name is?

20 A. Francisco.

21 Q. Francisco?

22 A. Right.

23 Q. State's Exhibit No. 2?

24 A. Fugon.

25 Q. Fugon?

1 A. Right.

2 Q. Can you tell the ladies and gentlemen of
3 the jury how it was that you became aware that
4 these two folks were inside your home?

5 A. I was sleeping with my daughter that
6 night in her bedroom because I had some problem
7 with surgery with my eyesight that week.

8 Q. Okay.

9 A. And I was awakened by the light, the
10 switch on, and the bright light, and I look at my
11 husband first and I notice that his hand was
12 tied. And there was another man with him, and I
13 thought I was dreaming. I tried to close my eyes
14 one more time and try to put the cover over. I
15 just wanted it to go away. But then I realized --

16 Q. I'll tell you what. Let me just ask you
17 this. We can go a lot faster if we just go
18 question and answer. I want to get to a couple of
19 areas that will be new to the jury.

20 A. Okay.

21 Q. When these men came into your bedroom,
22 did you do anything with respect to your daughter?

23 A. I put the blanket over here and put some
24 pillows around her because I was concerned that
25 when they through with us they probably would

1 waste us.

2 Q. When you say waste you, what do you mean?

3 A. Kill us.

4 Q. Did you see guns in their hands?

5 A. Yes, I did.

6 Q. Both of these men had guns?

7 A. Both of them, yes.

8 Q. Did they tell you, either one of these
9 men tell you why they were in your house?

10 A. Yes.

11 Q. Okay, now, let's do it question and
12 answer, then let me follow up with a question or
13 two in response.

14 MR. ODOM: Judge, if I don't have running
15 objections to this witness, I would request it for
16 the same reasons that I had objected to the other
17 witnesses.

18 THE COURT: Certainly.

19 Q. (By Mr. Smyth) Your answer was, yes,
20 they told you why they were in the house. What
21 did they tell you the reason they were in your
22 house?

23 A. They were looking for diamonds and
24 jewelry.

25 Q. Okay, did you have any big quantities of

1 diamonds or jewelry in your house?

2 A. No, I don't.

3 Q. Did you tell those men that you didn't
4 have any diamonds and jewelry in your house?

5 A. Yes, we told them, but I don't think they
6 believed us.

7 Q. Did they look around your house looking
8 for property?

9 A. Yes, they did, for two and a half hours.

10 Q. Okay. All this time they're doing that,
11 does your daughter stay in bed covered up?

12 A. Yes, she did.

13 Q. Did they get you up out of bed and have
14 you look around the house for diamonds and
15 jewelry?

16 A. Yes, they did.

17 Q. Did you have any jewelry on your person?

18 A. Yes, I had a bracelet on my arms, and
19 they told me to take it off. And it was -- I wore
20 that bracelet since I was 16, so it was kind of
21 hard to take it off. He just kept on, you take it
22 off. And I got scared he would chop my hands off,
23 so I said let me get some soap to take it off.
24 And they took off my bracelet and my necklace on
25 my neck.

1 Q. You apparently had worn that bracelet for
2 a number of years then?

3 A. Yes, I did.

4 Q. You got the bracelet off?

5 A. Yes.

6 Q. Did they take any other jewelry off your
7 person?

8 A. They took off one of my rings on my
9 right-hand side, but I turned my diamond ring over
10 so they didn't see the diamond on my left-hand
11 side.

12 Q. They didn't get your diamond ring?

13 A. No, they did not.

14 Q. Is that your wedding ring?

15 A. Yes.

16 Q. Did these men say anything to you about
17 whether they were there to rob you on their own or
18 because somebody had sent them?

19 A. Both of them had told me that in a way of
20 saying that they apologized for being here but
21 they were forced to be here because if they don't
22 bring something back, they can be harmed or hurt
23 in their own words.

24 Q. That's what they told you?

25 A. That's what they told me more than once,

1 yes.

2 Q. Did they ever tell you why they were
3 spending two and a half hours in your house?

4 A. Because they were told that we have some
5 diamonds and jewelry in our house.

6 Q. I take it they eventually left your house
7 and you folks got in contact with the police; is
8 that correct?

9 A. That's correct, yes.

10 MR. SMYTH: I'll pass the witness, Your
11 Honor.

12 THE COURT: Thank you, Mr. Smyth. Mr.
13 Odom.

14 MR. ODOM: No questions, Your Honor.

15 THE COURT: You are excused. Thank you
16 for your testimony.

17 Please call your next witness.

18 MR. SMYTH: The State will call Rachel
19 Ohayon.

20 (Witness is sworn).

21 THE COURT: Mr. Smyth
22
23
24
25

1 RACHEL OHAYON,
2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SMYTH:

6 Q. Ma'am, would you please state your name
7 and speak loud enough and slow enough so that the
8 entire jury panel can hear you.

9 A. My name is Rachel Ohayon.

10 Q. Ma'am, do you work outside the home at
11 this time?

12 A. At this time, no.

13 Q. In the past have you worked outside the
14 home?

15 A. Yes, I did.

16 Q. When was the last time you worked outside
17 the home in a professional capacity?

18 A. I was engaged in the diamond wholesale
19 business from 1994 until 1996.

20 Q. Who did you work for?

21 A. I worked for MGI which was a diamond
22 wholesale company.

23 Q. And what did you do for MGI?

24 A. I managed the company and owned part of
25 it.

1 Q. Is MGI in any way connected with Szucs
2 Jewelry?

3 A. Yes, it's a subsidiary company for
4 Satler's Jewelry.

5 Q. And what street in Texas -- in Houston,
6 Harris County, Texas, do you live on?

7 A. I live on 7731 Portal Drive.

8 Q. And you just saw, I believe, Mrs.
9 Christina Tsang get off the stand. Does she live
10 in your neighborhood?

11 A. Yes, sir, she's two doors down.

12 Q. So your house, then one house, then her
13 house?

14 A. Yes, sir.

15 MR. ODOM: Judge, I would renew my same
16 objection and ask that I have a running objection
17 as to this witness.

18 THE COURT: Certainly.

19 Q. (By Mr. Smyth) Do you recall Thursday,
20 November the 16th, 1995, and on into the early
21 morning hours of Friday, November the 17th, 1995?

22 A. Yes, sir, I do.

23 Q. Did you live at that address on Portal
24 Street, 7731; is that correct?

25 A. Yes, sir.

1 Q. Did you live there on that address at
2 that period of time?

3 A. Yes, sir, I did.

4 Q. Are you a married woman?

5 A. Yes, sir.

6 Q. Who is your husband?

7 A. My husband is Albert Ohayon.

8 Q. Do you have any children?

9 A. Yes, I have three children.

10 Q. Back on that date, November the 16th and
11 17th of 1995, what did your husband do for a
12 living?

13 A. He was a salesman carrying diamonds and
14 fine jewelry and he worked in the same company
15 that I did from 1994 until May of 1996.

16 Q. And back in November of that year, did he
17 sell to diamond jewelry stores in the Houston area
18 or someplace else?

19 A. He used to travel all over the United
20 States.

21 Q. Was there any particular routine that he
22 had the week -- that week in November?

23 A. Yes.

24 Q. Did he leave at a certain time?

25 A. Yes.

1 Q. What was his schedule?

2 A. He used to leave on Monday morning and
3 come back on Thursday evening.

4 Q. When he'd come back on Thursday evening,
5 did he go by the office before he came home or did
6 he just come straight from the airport?

7 A. No, he came straight from the airport
8 home, and then on Friday morning he would bring
9 his briefcase with the jewelry and bring it to the
10 safe. But Thursday night he would have his
11 jewelry with him.

12 Q. When he came home on Thursday -- and he
13 was in your home on the evening of Thursday,
14 November the 16th, 1995; is that correct?

15 A. Yes.

16 Q. Had he brought his jewelry with him, his
17 jewelry there?

18 A. Yes, he did.

19 Q. You were in the diamond business at that
20 time. Do you personally know how much, what was
21 the value of the diamonds in his case that was in
22 your house on Portal Street on Thursday, November
23 the 16th, 1995?

24 A. It was approximately five hundred
25 thousand dollars in value.

1 Q. In the early morning hours of Friday,
2 November the 17th, 1995, did anybody come knock on
3 your door?

4 A. Yes, a police officer came in in the
5 morning hours.

6 Q. Okay. Is this before the sun comes up?

7 A. Yes.

8 Q. Without telling anybody what the police
9 officer said, at that time did you become aware
10 that there had been a home invasion robbery at the
11 home of Danny and Christina Tsang just two doors
12 down?

13 A. Yes, I did.

14 Q. When the police come to your door to wake
15 you up, or did they come to check on you?

16 A. This police officer came in to check on
17 my welfare. He said there was a robbery.

18 Q. Don't tell me what the police said. They
19 came to check on your well-being?

20 A. Yes, sir, that it's fine.

21 Q. You were in the diamond business from '94
22 through '96, and your husband had been in the
23 diamond business for how long?

24 A. He's been in business from '91 since we
25 came to Houston until about three months ago.

1 Q. While you were in the diamond business,
2 did you come to know the names of Jose Albert
3 Dennes and Reinaldo Dennes?

4 A. Just by name, yes, sir.

5 Q. Do you know whether or not either Jose
6 Albert Dennes or Reinaldo Dennes worked for
7 Satler's Jewelry at the same time your husband
8 did?

9 A. They worked there about six years ago,
10 not at the same time my husband did.

11 Q. Is your husband, is he well known in the
12 diamond business?

13 A. Yes, sir, he is.

14 MR. SMYTH: Pass the witness, Your Honor.

15 THE COURT: Thank you, Mr. Smyth. Mr.
16 Odom.

17 MR. ODOM: Thank you.

18
19 CROSS EXAMINATION

20 BY MR. ODOM:

21 Q. I just have a few questions I'd like to
22 ask you as well. At the time you were working for
23 which company?

24 A. MGI.

25 Q. Is that the same company that your

1 husband was a salesman for?

2 A. Yes.

3 Q. Where were they located?

4 A. They're located at Post Oak right next
5 door to Satler's Jewelers.

6 Q. What's the address on Post Oak?

7 A. I think it's 1749. It's between
8 Westheimer and San Felipe on Post Oak.

9 Q. Is it on Richmond?

10 A. No.

11 MR. ODOM: Pass the witness.

12 MR. SMYTH: Nothing further, Your Honor.

13 THE COURT: This witness can be excused.
14 Thank you, ma'am, for your testimony this
15 afternoon. Appreciate you coming down.

16 Call your next witness, please.

17 MR. VINSON: Your Honor, at this time the
18 State would recall Nicole Szucs.

19 THE COURT: Mr. Vinson.

20 MR. VINSON: Thank you, Your Honor.

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1 NICOLE SZUCS,
2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. VINSON:

6 Q. You are the same Nicole Szucs who
7 testified here last week?

8 A. Yes, I am.

9 Q. And you realize that you're still under
10 oath today?

11 A. Yes, I know.

12 Q. Ms. Szucs, can you tell His Honor and the
13 ladies and gentlemen of the jury where did your
14 husband come from?

15 A. He came from Hungary. He was born in
16 Hungary.

17 Q. Go ahead.

18 A. And he left Hungary when he was 18. He
19 escaped to Austria.

20 MR. ODOM: Judge, may I approach the
21 bench.

22 (Whereupon counsel approached the bench).

23 MR. ODOM: I'm going to object to going
24 into the background and the character of the
25 deceased at this time in that it's not an

1 appropriate matter to be considered for
2 sentencing. I don't think it goes to any of the
3 three issues. And I think that there is case law
4 to indicate that that is not an issue that should
5 be considered at this time.

6 MR. VINSON: I'll withdraw, Your Honor.

7 THE COURT: Thank you very much.

8 BY MR. VINSON:

9 Q. Let's go back to the relationship that
10 your husband had with the defendant Reinaldo
11 Dennes. I think you testified last week that he
12 sent business to Reinaldo; is that correct?

13 A. Yes.

14 Q. And how long had he been doing that
15 before he was killed?

16 A. Well, apparently they have had a working
17 relationship for quite awhile. I don't know how
18 many years, but it was more than five years.

19 Q. And how frequently would your husband
20 refer work to Mr. Dennes, on a weekly, monthly
21 basis?

22 A. You know, since Johnny kept it so
23 personal and he didn't really get into everyone he
24 saw on a regular basis, but the week before I was
25 helping him with his income tax and the chair

1 broke and he started laughing. He says, well,
2 I'll take it down to Ray so he can weld it for
3 him.

4 Q. And so would it be a fair statement to
5 say that your husband had a great deal of trust in
6 this defendant?

7 A. I don't know if I would say trust, but I
8 think he always helped the underdog type. He
9 always gave people chances. You know, he was just
10 that way.

11 Q. Now, how has the death of your husband,
12 how has it impacted upon your life?

13 MR. ODOM: I object to the form of the
14 question. I object to the question.

15 Q. (By Mr. Vinson) This offense, how has
16 that impacted upon your life?

17 MR. ODOM: I object to that as beyond the
18 purview of the issues and goes to the effect of
19 the case upon the victims. The family is not an
20 issue as to the three special issues.

21 MR. VINSON: It is to the respect, Your
22 Honor, that she was trying to locate him that
23 night, and she can testify how it impacted upon
24 her.

25 MR. ODOM: That's not what he asked

1 though, Judge. He asked an open ended how this
2 has -- what has the effect been upon her.

3 THE COURT: Very well. Sustained.

4 BY MR. VINSON:

5 Q. How did the night that you were trying to
6 locate your husband, how did that then determining
7 that something had happened at the building, how
8 did that impact upon you, that building?

9 A. You know, Johnny just meant so much to
10 me. I always watched out for him. I was always
11 careful about him. I just loved him.

12 MR. ODOM: Once again, I object. This is
13 victim impact evidence. This is not evidence
14 that's appropriate at the punishment stage of the
15 hearing as to the three special issues.

16 MR. VINSON: There is a case, Payne
17 versus Tennessee.

18 MR. ODOM: There is also a case that
19 comes out from victim impact not being available
20 because they're improper.

21 MR. VINSON: May we approach, Your
22 Honor?

23 (Whereupon counsel approached the bench).

24 MR. VINSON: We have had a recent case
25 where the husband -- I mean the wife was able to

1 testify to the impact that it had upon her at the
2 time her husband was killed in that she was in the
3 same room with him. She testified to that. In
4 that case it's live victim impact. And this I
5 have restricted to the events and the impact it
6 had upon her the night the offense was committed.
7 She was looking for her husband. She had
8 knowledge that an offense had been committed in
9 the building, a shooting had taken place in the
10 building. She should be able to tell the jury
11 what impact that had on her.

12 MR. ODOM: Judge, there is no way she can
13 delineate between what is general victim impact
14 type evidence that the Court of Criminal Appeals
15 has clearly said is not admissible from what
16 occurred that evening as to what may have occurred
17 at a later date. And --

18 MR. VINSON: We're talking about that
19 evening.

20 MR. ODOM: That's what the question
21 says. But there is no way you can make such a
22 delineation.

23 MR. VINSON: Yes, she can. She can tell
24 what went through her mind that evening and what
25 went on.

1 MR. ODOM: Judge, haven't we gone into
2 this on the case in chief?

3 MR. VINSON: No, no.

4 MR. ODOM: That's the State's opportunity
5 to do that was during the case in chief and they
6 chose not to do so. So now we're at punishment
7 where there are specific rulings in regard to that
8 and they wish to get in evidence that was
9 appropriate at the case in chief at the punishment
10 stage.

11 MR. VINSON: We'll comply with whatever
12 rule the Judge makes. We'll comply.

13 THE COURT: In an abundance of caution, I
14 sustain the objection.

15 MR. ODOM: Could I ask for an instruction
16 to disregard and also ask for a motion for
17 mistrial, Judge.

18 THE COURT: Disregard what?

19 MR. VINSON: We would ask to disregard
20 that. We won't ask anything further.

21 THE COURT: Disregard what?

22 MR. ODOM: The question was already
23 asked. The harm is already done. She's up here
24 crying, and the jury can see it, Judge.

25 THE COURT: Disregard the witness

1 crying?

2 MR. ODOM: If that's what the record
3 says, I've got to do --

4 THE COURT: Is that what you want me to
5 do? Do you want me to tell this jury to disregard
6 that the witness is crying?

7 MR. ODOM: Judge, I've got to preserve my
8 record.

9 THE COURT: Excuse me, Mr. Vinson.
10 I'm just asking you is that what you want
11 me to pose to the jury? I'll do that, but I don't
12 know if that's to your benefit.

13 MR. ODOM: No, sir, Judge, to disregard
14 the last question that Mr. Vinson asked, and then
15 I'd asked for a mistrial based upon the witness's
16 crying.

17 THE COURT: The jury will disregard Mr.
18 Vinson's last question to this witness.

19 Please continue.

20 MR. VINSON: Your Honor, we have no
21 further questions.

22 MR. ODOM: I have no further questions.

23 THE COURT: Thank you again for coming
24 down. We appreciate again your testimony.

25 Is she welcome to remain in the

1 courtroom, Mr. Odom? Do you have any objection?

2 Very well. If you'd like to remain in
3 the courtroom, you may.

4 MR. VINSON: May we approach, Your
5 Honor?

6 THE COURT: Sure.

7 (Whereupon counsel approached the bench).

8 MR. SMYTH: Your Honor, may she be
9 excused from the rule?

10 MR. VINSON: HPD just arrived. We have a
11 judgment and sentence we have to introduce, but we
12 need an HPD jail card. We have the man from the
13 Sheriff's Department at ID. He needs to take a
14 look at that.

15 THE COURT: What's the judgment and
16 sentence for?

17 MR. VINSON: It's indecency. Let me grab
18 it real quick.

19 THE COURT: A conviction?

20 MR. ODOM: Yes, public indecency in a
21 park.

22 THE COURT: Is he going to stipulate?

23 MR. ODOM: I don't know.

24 THE COURT: I mean if he stipulates, we
25 don't have to do fingerprints.

1 MR. ODOM: I'll ask him, but I don't
2 know.

3 THE COURT: Well, let's find out if he's
4 going to stipulate.

5 MR. ODOM: Although we are willing to
6 stipulate that they do not have to bring down the
7 person from jail records, I do object to the
8 admissibility of the document because it relates
9 to a deferred adjudication that this defendant
10 successfully lived out. And I feel that it is
11 beyond the scope of evidence that this Court
12 should allow in consideration of evidence on
13 punishment.

14 THE COURT: Are we talking about
15 deferred?

16 MR. ODOM: Yes, it was a deferred.

17 THE COURT: He was never convicted?

18 MR. VINSON: It's still admissible, any
19 act, adjudicated or unadjudicated acts.

20 THE COURT: Are you certain about that?

21 MR. VINSON: Yes.

22 MR. ODOM: It's my position that it would
23 be in violation of the constitution of the State
24 of Texas for such evidence to come in once a
25 person has successfully lived out the terms of

1 this deferred adjudication.

2 THE COURT: What are we stipulating to?

3 MR. ODOM: I'd stipulate to the fact that
4 if the guy came in, he is one and the same. As
5 far as them being able to prove it up, I stipulate
6 to that. I'm objecting to the admissibility.

7 THE COURT: All you're willing to
8 stipulate to is this is one and the same person?

9 MR. ODOM: I'm objecting to the
10 admissibility of it is what my objection goes to.
11 But I still don't think it's admissible.

12 THE COURT: I appreciate it. Let's bring
13 up that stipulation that says you're stipulating
14 this defendant is one and the same person who was
15 charged with this offense.

16 MR. VINSON: He was placed on deferred
17 adjudication.

18 THE COURT: For the offense?

19 MR. VINSON: Yes, sir.

20 MR. ODOM: I will stipulate --

21 MR. VINSON: Either you accept the full
22 stipulation or you don't.

23 MR. ODOM: All I'm saying is I stimulate
24 he's one and the same. You're saying I'm waiving
25 all objections, which I'm not doing.

1 I'm stipulating he's one and the same.
2 That's all I'm stipulating to.

3 THE COURT: Mr. Odom, will you approach.
4 I think he needs to be sworn. Do we need to do
5 that outside the presence of the jury? Does that
6 make any difference to you?

7 MR. ODOM: Yes, why don't we do that
8 outside the presence of the jury.

9 THE COURT: Mr. Schillaci, let's take the
10 jury out for one moment, please.

11 Don't get too comfortable. We'll have
12 you right back out in about two minutes.

13 (Jury retired).

14 THE COURT: You may be seated.

15 MR. ODOM: Judge, we don't have a
16 stipulation.

17 THE COURT: We do not?

18 MR. VINSON: In that case we can get him
19 fingerprinted while the jury is out.

20 THE COURT: Let's do that real quickly.

21 (Jury in jury box).

22 THE COURT: Please be seated. Let's
23 continue.

24 MR. VINSON: Thank you, Your Honor. At
25 this time the State would call Ana Moreno.

1 THE COURT: Mr. Vinson.

2 MR. VINSON: Thank you, Your Honor.

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4

5 ANA MORENO,
6 was called as a witness by the State and, having
7 been duly sworn, testified as follows:

8

DIRECT EXAMINATION

9

BY MR. VINSON:

10 Q. Ma'am, would you give your complete name
11 for the record?

12 A. Ana Moreno.

13 Q. I take it by your uniform that you're
14 employed by the Houston Police Department?

15 A. Yes, sir.

16 Q. How long have you been so employed?

17 A. Five years.

18 Q. Are you assigned to a particular
19 department or certain area within the police
20 department?

21 A. Yes, I work for the Identification
22 Division.

23 Q. And would you tell the ladies and
24 gentlemen of the jury what you do in that
25 capacity?

A. I deal with criminal histories. When the

1 prisoners come in to the jail, they take their
2 fingerprints. I verify them and class them, and
3 I'm also a custodian of records.

4 Q. Now, as custodian of the records, are
5 these records kept in the regular course of
6 business? Are they kept in the regular course of
7 business?

8 A. Yes.

9 Q. And are the entries made at or near the
10 time of the events depicted in that report?

11 A. Yes, sometimes the same day.

12 Q. And it's made by a person who has
13 personal knowledge?

14 A. No. Like that knows him? No.

15 Q. No, not that knows. No, not that knows
16 him. Someone who has personal knowledge that the
17 entry is being made.

18 A. Oh, yes. I'm sorry.

19 Q. And do you maintain those records in the
20 regular course of business?

21 A. Yes, we do.

22 Q. Now, at my request this afternoon, did
23 you bring a jail card on a person by the name of
24 Reinaldo Dennes?

25 A. Yes.

1 MR. VINSON: May I approach the witness,
2 please.

3 THE COURT: You may.

4 (Whereupon State's Exhibits Nos. 3, 4,
5 and 4-a were marked for identification purposes).

6 Q. (By Mr. Vinson) Let me show you what's
7 been marked for identification purposes as State's
8 Exhibit 4. I'm going to ask you, can you identify
9 State's Exhibit No. 4?

10 A. Yes, it's a hold card for Reinaldo
11 Dennes.

12 Q. Let me show you what's been marked for
13 identification purposes as State's Exhibit 4-a.
14 Can you identify that as well?

15 A. Yes, it's a certified copy of the same
16 hold card.

17 Q. Okay. And is this made at the time a
18 person comes into the jail?

19 A. Yes.

20 Q. Just like you testified to earlier?

21 A. Yes.

22 Q. And do you also take the fingerprints of
23 the person?

24 A. Yes, we put them on the corner, the right
25 hand fingerprints on the card.

1 MR. VINSON: Your Honor, at this time the
2 State will offer into evidence Exhibit 4-a and
3 tender same to defense counsel for his
4 inspection.

5 MR. ODOM: No objection, Your Honor.

6 THE COURT: State's 4-a is admitted.

7 (Whereupon State's Exhibit No. 4-a was
8 admitted into evidence).

9 MR. VINSON: May I just have a moment,
10 Your Honor?

11 I have nothing further from this witness,
12 Your Honor.

13 THE COURT: Thank you, Mr. Vinson. Mr.
14 Odom.

15 MR. ODOM: I have no questions for this
16 witness.

17 THE COURT: Thank you. You may step
18 down. Thank you for your testimony.

19 Please call your next witness.

20 MR. VINSON: Your Honor, at this time the
21 State would call Deputy Mc Donald, Harris County
22 Sheriff's ID.

23 MR. VINSON: Your Honor, I'm returning
24 her original copy.

25 THE COURT: Very well.

1 ROY WILLIAM MC DONALD,
2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. VINSON:

6 Q. Sir, would you introduce yourself to His
7 Honor and the ladies and gentlemen of the jury?

8 A. I'm Roy William McDonald. I'm a deputy
9 with the Harris County Sheriff's Department, and
10 I'm assigned to the Identification Division.

11 Q. And how long have you been with the
12 Harris County Sheriff's Department?

13 A. I've been full-time for approximately 14
14 years.

15 Q. And how long have you been in the
16 Identification Division?

17 A. For over 13 years.

18 Q. Can you tell the ladies and gentlemen and
19 His Honor what type of training you received to
20 prepare you to work in that locale?

21 A. I've received the basic and advanced
22 courses in fingerprints taught by the Texas
23 Department of Public Safety and those same two
24 courses taught by the FBI and over 13 years
25 day-to-day experience.

1 Q. And, sir, in your work are you called on
2 from time to time to take a print from a judgment
3 and sentence and compare that with a known print
4 and determine if the print on the judgment and
5 sentence is made by one and the same person?

6 A. Yes, sir.

7 Q. And at my request did you do that today?

8 A. Yes, sir.

9 Q. And can you identify the person whose
10 fingerprint you secured?

11 A. The individual seated on the other side
12 of the table from the jury with no glasses on, the
13 green colored suit.

14 MR. VINSON: Your Honor, may the record
15 reflect that this witness has identified the
16 defendant.

17 THE COURT: The record will so reflect.

18 Q. (By Mr. Vinson) Would you tell the
19 ladies and gentlemen of the jury how you take a
20 person's fingerprints?

21 A. On the underside of our fingers there are
22 very small ridges, and these ridges form patterns
23 that contain characteristics. And to take a
24 fingerprint, we apply a thin film of ink to the
25 underside of the finger and reproduce that pattern

1 or characteristics onto a smooth surface.

2 Q. And did you do that in this case?

3 A. Yes, sir.

4 Q. Now, after taking the defendant's
5 fingerprints, did you have an occasion to compare
6 those prints with the criminal history from the
7 Houston Police Department?

8 A. I compared them to a document from the
9 Houston Police Department. I didn't notice what
10 it was.

11 MR. VINSON: Okay. May I approach, Your
12 Honor?

13 THE COURT: You may.

14 (Whereupon State's Exhibit No. 5 was
15 marked for identification purposes).

16 Q. (By Mr. Vinson) Let me show you what's
17 been introduced into evidence as State's Exhibit
18 4-a. I'm going to ask you can you identify that
19 document?

20 A. Yes, sir, I can.

21 Q. And is that the same document that you
22 had an opportunity to look at earlier this
23 afternoon while the jury was out?

24 A. Yes, sir.

25 Q. Now, let me show you what's been marked

1 for identification purposes as State's Exhibit 5.
2 Can you identify that as well?

3 A. Yes, sir, I can.

4 Q. And what is State's 5 that is marked for
5 identification purposes?

6 A. Exhibit 5 is a 3 x 5 card upon which I
7 placed the fingerprints of the individual I
8 pointed out to you earlier.

9 Q. Okay. And did you have an opportunity to
10 compare the fingerprints that's on State's Exhibit
11 4-a with the fingerprints that's contained on
12 State's 5 that was marked for identification
13 purposes?

14 A. Yes, sir, I did.

15 Q. And did you form an opinion as to whether
16 or not those fingerprints in State's 4-a and 5
17 that was marked for identification purposes were
18 made by one and the same person?

19 A. Yes, sir, I did.

20 Q. Who would that person be?

21 A. These prints were all made by the
22 defendant, the one I pointed out to you.

23 Q. Okay, and can you tell the ladies and
24 gentlemen of the jury and His Honor the basis of
25 your opinion?

1 A. Based on -- after comparing the prints,
2 it's based on my training and experience.

3 Q. Have you ever seen two people with the
4 same fingerprints?

5 A. No, sir.

6 MR. VINSON: I have no further questions,
7 Your Honor. Pass this witness.

8 MR. ODOM: Judge, I have no questions for
9 this witness. However, let me make sure I didn't
10 misspeak. I said I didn't have an objection to
11 4-a. I didn't have an additional objection other
12 than the objections I had raised outside the
13 presence of the jury before the bench.

14 THE COURT: Very well. May this witness
15 be excused?

16 Thank you for your testimony, Deputy.
17 Call your next witness.

18 MR. VINSON: Your Honor, at this time the
19 State has no further witnesses to call but we
20 would offer into evidence State's Exhibit 3 is a
21 certified copy of the indecent exposure charge
22 under Cause No. 8911934 against Reinaldo Dennes in
23 County Court No. 13, Harris County, Texas.

24 THE COURT: Tender to the defendant.

25 MR. ODOM: Judge, I renew the objections

1 I made to the bench outside the presence of the
2 jury.

3 THE COURT: It's overruled. It's
4 admitted.

5 (Whereupon State's Exhibit No. 3 was
6 admitted into evidence).

7 THE COURT: Is it to be published or not
8 published?

9 MR. VINSON: Yes, Your Honor, we ask that
10 it be published.

11 THE COURT: Did you want them to read it
12 or do you want to just circulate it?

13 MR. VINSON: We could speed it up if I
14 were to read it, with the Court's permission.

15 Minutes of County Clerk Criminal -- that
16 is County Criminal Court at Law No. 13 on April
17 term 1989. The Cause is 8911934, the State of
18 Texas versus Reinaldo Dennes, April the 26th
19 of '89, Order of Deferred Adjudication of Guilt
20 and Probation. And it reflects here that the
21 offense is indecent exposure as charged in the
22 information, a plea of guilty, a fine of two
23 hundred dollars, adjudication of guilt deferred
24 for a period of 180 days. And it was signed on --
25 date of offense was April the 1st of 1989, and it

1 was signed on the 26th day of April, 1989.

2 THE COURT: Very well.

3 Did I hear you say the State rests?

4 MR. VINSON: The State will offer all the
5 previous evidence and rest at this time.

6 THE COURT: Mr. Odom, please call your
7 first witness.

8 MR. ODOM: Before I do that, could the
9 Court allow me to make a brief motion?

10 THE COURT: Does the State want to
11 approach?

12 MR. VINSON: I'm sorry.

13 (Whereupon counsel approached the bench).

14 MR. ODOM: I make a motion for a judgment
15 of acquittal, motion for instructed verdict of
16 acquittal. I believe Hayes vs the State says,
17 based upon the fact the extraneous matters that
18 have been presented are inadmissible for the
19 reasons I expressed and that without them the
20 State does not have the prerequisite necessary to
21 prove the special issues for which they are
22 required to prove beyond a reasonable doubt.

23 THE COURT: Thank you. That's
24 overruled.

25 MR. ODOM: Yes, Your Honor, we would like

1 to proceed at this time.

2 THE COURT: Please call your first
3 witness.

4 MR. ODOM: We call the custodian of
5 records for the Harris County Jail, Your Honor.

6 THE COURT: Very well.

7 MR. ODOM: This witness has not been
8 sworn in, Your Honor.

9 (Witness is sworn).

10 (Whereupon counsel approached the bench).

11 MR. ODOM: I'm certainly not opposed to
12 Mrs. Szucs being in the courtroom, but she's been
13 crying the whole time she's been in the
14 courtroom. And I think we have a motion that I
15 adopted from Mr. Parnham to try to prohibit over
16 displays of emotion. And I think it's quite
17 distracting to any testimony that I want to put
18 on. I don't mind if she's here as long as she's
19 not crying.

20 THE COURT: Would you be satisfied if I
21 call her up?

22 MR. ODOM: Judge, at some point, a
23 break. I don't want to be hard about this, but
24 that's one of the reasons I did not want her
25 waived from the rule is because she's obviously

1 very emotional, and that's understandable.

2 THE COURT: Do you want me to ask her to
3 leave?

4 MR. ODOM: Or perhaps the State can talk
5 to her.

6 MR. SMYTH: Why don't we clear the front
7 row during the first break and keep both the
8 families off the front row?

9 THE COURT: I'll think about that. Go
10 back and tell Mrs. Szucs if she's going to
11 continue to show some type of emotion, she'll have
12 to leave.

13 MR. SMYTH: I'll certainly tell her
14 that. But his client's family have been
15 snickering and making all kinds of sounds.

16 THE COURT: That's fine. You didn't
17 bring it to my attention.

18 MR. ODOM: I didn't see that, but I know
19 I've been putting on my testimony and she's been
20 crying since she was up here. She's not in here
21 now.

22

23

24

25

1 CALVIN WILSON,
2 was called as a witness by the Defense and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ODOM:

6 Q. State your name for the Court and the
7 record, please, sir.

8 A. My name is Calvin Wilson.

9 Q. All right, and how are you employed,
10 Deputy Wilson?

11 A. I'm a deputy sheriff with the Harris
12 County Sheriff's Department.

13 Q. And what position do you have with the
14 Harris County Deputy Sheriff's Department?

15 A. I work a division called classification
16 division. We keep the records for all inmates
17 that are incarcerated in the Harris County Jail.

18 Q. And did you receive a summons or a
19 subpoena to appear in court in regards to certain
20 records for an inmate by the name of Reinaldo
21 Dennes?

22 A. Yes, I did.

23 Q. And pursuant to that subpoena, did you
24 bring certain records over that are in the
25 possession of your particular office?

1 A. Yes, I did.

2 Q. Now, Mr. Wilson, I'd like to ask you some
3 questions. First of all, is the information
4 contained in your records, the records you brought
5 over, is it reports and data, events that are made
6 at or near the time?

7 MR. VINSON: Your Honor -- if you're
8 representing that he is a custodian of the
9 records, we'll stipulate that he is.

10 THE COURT: Very well. Thank you very
11 much.

12 MR. ODOM: It saves us asking some
13 questions.

14 Q. (By Mr. Odom) Are you the custodian of
15 the records of Reinaldo Dennes?

16 A. Yes, I am.

17 MR. ODOM: Your Honor, at this time, may
18 I approach the witness?

19 May I see those records and have them
20 marked. Are these copies?

21 THE WITNESS: These are copies.

22 (Whereupon Defendant's Exhibit No. 1 was
23 marked for identification purposes).

24 Q. (By Mr. Odom) Deputy Wilson, I'd like to
25 show you what's been marked as Defense Exhibit No.

1 1 for purposes of sentencing hearing and ask if
2 Defense Exhibit No. 1 represents those records
3 that we're talking about that belong to an inmate
4 by the name of Reinaldo Dennes?

5 A. Yes, they are.

6 Q. All right. Deputy, by looking at your
7 records, can you tell the jury at what time he
8 went in custody with the Harris County Jail? On
9 what date it is by that is what I mean.

10 A. The date I see, the record I have in my
11 hand, it's February 24th, 1996, is the actual date
12 that the jail card was printed indicating that
13 someone was brought into the Harris County Jail
14 which was Reinaldo Dennes.

15 Q. All right. And do your records indicate
16 that he has been released or that he has stayed
17 within the Harris County Jail from that date of
18 February 24th of 1996?

19 A. Yes, the records that I have indicate
20 that he's been incarcerated since the time he came
21 to the Harris County Jail.

22 Q. All right. So just to make sure there is
23 no confusion in that regards, he hasn't been out
24 since he came in? He's been there since that
25 time?

1 A. Yes, there is no record to indicate that
2 he's been released.

3 Q. All right. Now, originally -- well, I've
4 not offered those records in evidence yet.

5 May I approach the witness?

6 THE COURT: You may.

7 Q. (By Mr. Odom) Deputy, there is one
8 record in here that is what we call a hearsay
9 matter. Isn't there a copy of a newspaper
10 clipping in here?

11 A. Yes, there is.

12 MR. ODOM: Other than that, I would
13 tender --

14 THE COURT: Excuse me. Mr. Vinson, do
15 you have an objection?

16 MR. VINSON: May we approach, Your
17 Honor?

18 THE COURT: You may.

19 (Whereupon counsel approached the bench).

20 THE COURT: Go ahead.

21 MR. VINSON: You can staple them
22 together.

23 MR. ODOM: I was going to put them in a
24 paper clip, but I did want to take out the
25 newspaper article.

1 MR. VINSON: Okay, I have no objection to
2 that.

3 THE COURT: Yes, that's just hearsay.

4 MR. ODOM: At this time I would offer
5 Defense Exhibit No. 1, Your Honor.

6 THE COURT: Any objection?

7 MR. VINSON: May I have one quick look at
8 it again, Your Honor?

9 THE COURT: Sure.

10 MR. VINSON: Your Honor, the State has no
11 objection.

12 THE COURT: Defense 1 is admitted.
13 Please proceed.

14 (Whereupon Defendant's Exhibit No. 1 was
15 admitted into evidence).

16 Q. (By Mr. Odom) Now, Deputy Wilson, when
17 the defendant originally came in to the jail, was
18 he given an unusual classification or was he given
19 a classification that, as a layman, I would call
20 general population classification?

21 A. Not when he was first classified by our
22 division. We put him in what we consider inmate
23 separation from other inmates because of the
24 nature of his case.

25 Q. And by that, the fact that he's charged

1 with capital murder?

2 A. Not so much charged with capital murder,
3 but one of the reasons the newspaper clipping was
4 there because that gave us an indication of the
5 possibly it was a high profile case from what we
6 read in the newspaper. And to protect him at that
7 particular time, we separated him from other
8 inmates until maybe the case had died down in the
9 media or the newspaper.

10 Q. A high profile case can pose unique
11 problems to the jail and its security, can it not?

12 A. Yes, it can.

13 Q. As a security precaution initially he was
14 classified in a special status when he came in?

15 A. Yes, he was.

16 Q. And was there a time when he was
17 reclassified according to your records?

18 A. Yes, he was.

19 Q. And what was he reclassified from and
20 what was he reclassified to?

21 A. He was reclassified from inmate
22 separation which was like a protection to a
23 general population which when he was moved, the
24 officers who moved him maybe considered him that
25 he no longer needed protection for whatever

1 reason.

2 Q. Now, has he been in -- I forgot the term
3 you used --

4 A. General population.

5 Q. -- general population since that time?

6 A. I don't know exactly when. I would have
7 to look over the records and see when he was moved
8 to general population.

9 Q. I'm not asking the exact date; but that
10 is in the records, is it not?

11 A. Yes, it is.

12 Q. But once he was moved in to general
13 population, the records reflect that he's been in
14 general population ever since, do they not?

15 A. Yes, from what I see, yes, he has.

16 Q. If someone is involved in an incident in
17 the jail, what is the procedure that -- by that an
18 infraction -- is there a procedure that is
19 employed to record what that infraction might be?

20 A. Yes, it is.

21 Q. What procedure is that, sir?

22 A. An inmate is written up by the deputy who
23 either observed or was given the information by
24 whomever to write up the inmate on an inmate
25 record form.

1 Q. We call that a write-up?

2 A. Yes, sir.

3 Q. There are what appear to be two write-ups
4 on Mr. Dennes during the year and some six odd
5 months that he's been in jail, is there not?

6 A. Yes, it is.

7 Q. What are the two write-ups that he's
8 received a note in his file for infractions for if
9 you can -- if it will help you to look at the
10 file, you certainly can.

11 A. The one write-up that I have in my hand
12 was from the offense or incident we consider
13 failure to be properly dressed in the day room,
14 refusing to obey an order. It was on one sheet,
15 but that was two write-ups on one form.

16 Q. Okay. So, in other words --

17 A. And the other write-up came at another
18 time, refusing to obey an order.

19 Q. Now, did he have an explanation or is
20 there anything in the file that would reflect the
21 failure to be properly dressed?

22 A. Yes.

23 Q. What does that reflect?

24 A. You mean whether he was found innocent or
25 guilty or what? I'm sorry.

1 Q. I'll ask that, too. First of all, was he
2 found innocent or guilty with regards to those
3 charges?

4 A. From an indication of a copy off the
5 disciplinary sheet, it appeared that he was found
6 guilty.

7 Q. All right, and what did he receive for
8 that?

9 A. Thirty days loss of privileges.

10 Q. All right. And what was his explanation
11 for that, if any?

12 A. He wrote a statement -- am I allowed to
13 read the statement?

14 Q. Yes, sir, can you read the statement to
15 us, please.

16 A. The statement read by Mr. Reinaldo --
17 written by Mr. Reinaldo Dennes, it's kind of hard
18 to read the writing. It will take a minute, if I
19 could look at it.

20 It appears to be, "I surrendered my bunk
21 to an inmate. I moved to the day room. I didn't
22 have a shirt on," period.

23 Q. Right. And that would be an infraction
24 of the rules if he was in the day room without his
25 shirt on, correct?

1 A. Yes, it would be.

2 Q. Do you see any write-ups for Mr. Dennes
3 in regards to any fighting?

4 A. No, not any records that I have.

5 Q. All right. Do you have -- show any
6 records of the defendant being involved in any
7 acts of violence of any sort in the records that
8 you have from February the 24th of 1996, to the
9 present?

10 A. No, I don't have any records of that.

11 Q. All right. But he has the two write-ups,
12 one for improperly being dressed in the day room
13 and then another for refusing to obey orders?

14 A. He has two for refusing to obey an order
15 and one failure to be properly dressed, yes, sir.

16 Q. And one of the refusing to obey orders
17 was associated with the failure to be properly
18 dressed?

19 A. Yes, sir.

20 Q. Then there is a second refusing to obey
21 orders; is that correct?

22 A. Yes, sir.

23 Q. What's the nature of that offense if you
24 can tell by looking at the write-up?

25 A. From what I can tell, basically the

1 nature was not returning his laundry, or something
2 to that effect, to the laundry cart, I guess to be
3 sent out to be laundered, I'm assuming. It's kind
4 of hard to read some of that writing.

5 Q. But the general nature of it is something
6 to that effect, that he didn't properly return the
7 laundry to the laundry cart?

8 A. Right.

9 Q. Do you have a separate unit for people
10 that not only may be a danger for other prisoners
11 but is there sometimes a segregation that's done
12 because a person is dangerous to either the
13 personnel in the jail or to other inmates?

14 A. Yes.

15 Q. And what do you call that?

16 A. The same thing, inmate separation. We
17 might title it protection, maximum security or
18 protection.

19 Q. There is no indication that Mr. Dennes
20 was either placed in any of those facilities, is
21 there?

22 A. For write-ups?

23 Q. Or at any time.

24 A. Only when he first came in.

25 Q. All right, and that was because of the

1 nature of the offense?

2 A. Yes, sir.

3 MR. ODOM: Pass the witness, Your Honor.

4 THE COURT: Thank you, Mr. Vinson.

5 MR. VINSON: Yes, Your Honor.

6
7 CROSS EXAMINATION

8 BY MR. VINSON:

9 Q. Why do you have those rules over there in
10 the jail?

11 A. One reason we have the rules over in the
12 jail, so we can make sure that we keep an orderly
13 running of the institution. Also, we pass out
14 handbooks to make inmates aware of the rules. We
15 have them in both English and Spanish.

16 Q. Mr. Dennes was given a handbook; is that
17 correct?

18 A. Yes, he was.

19 Q. You have those rules to maintain good
20 order and discipline over there; isn't that right?

21 A. Yes, sir.

22 Q. And any infraction could be a breach of
23 good order and discipline?

24 A. Yes it could be.

25 Q. And it could lead to further breaches of

1 good order and discipline; isn't that correct?

2 A. Yes, sir.

3 Q. You wouldn't write him up if he didn't
4 violate one of those rules; isn't that right?

5 A. No, they wouldn't or they shouldn't.

6 Q. Because when they write them up, they are
7 referred to -- I think you have to refer to what
8 rule was violated; is that correct?

9 A. Yes, sir.

10 Q. And I think you stated that the defendant
11 was then released to general population; is that
12 right?

13 A. Yes, he was.

14 Q. Okay, tell the ladies and gentlemen of
15 the jury who is in general population?

16 A. General population we have a little bit
17 of everyone who has committed a crime that you can
18 probably name in the Penal Code, in the book, from
19 capital murder, murder, aggravated assault, rape,
20 robbery. It doesn't necessarily mean when a
21 person comes in that they have to go to
22 protection.

23 Q. But I mean you also have people charged
24 with DWI in there?

25 A. Right, yes, sir, DWI.

1 Q. People charged with just basic theft?

2 A. Basic theft.

3 Q. So you're telling the ladies and
4 gentlemen of the jury that in a capital murder
5 case, a defendant could have an occasion to come
6 in contact with people who have been charged with
7 misdemeanors in the general population?

8 A. Yes, sir, very much so.

9 Q. Those people who are charged with
10 misdemeanors, they are later released from the
11 jail and don't go to the penitentiary; isn't that
12 right?

13 A. Yes, sir.

14 Q. What was the latest infraction, the date
15 of the latest infraction that the defendant was
16 involved in?

17 A. May I look at the notes?

18 Q. Yes, sir.

19 A. The latest one that I see, the dates of
20 refusing to obey an order, the last one was August
21 17th, 1997.

22 Q. And was that disobeying a direct order?

23 A. Yes, sir. Yes, it was.

24 Q. Tell the ladies and gentlemen of the jury
25 what the direct order was. Do you have it?

1 A. Yes. I was trying to read it to make
2 sure --

3 Q. All right.

4 A. Okay, it appears to me that the deputy
5 that wrote the report indicated that the inmates
6 were lying back on the bunks, they were ordered to
7 make their bunks.

8 Q. Now, they were ordered. Who ordered them
9 to do that?

10 A. The deputy who wrote the report. The
11 deputy who was in the pod or the cell block.

12 Q. That's a person wearing a uniform like
13 you're wearing?

14 A. Yes, sir.

15 Q. And a badge like you're wearing?

16 A. Yes, sir.

17 Q. And then he still disobeyed that person?

18 A. From the writings, yes, sir.

19 Q. And what date was that?

20 A. That was August 17th, 1997.

21 Q. That was just last month?

22 A. Basically, yes, sir.

23 Q. And I think you testified that he already
24 had been sent -- had he previously been sent, that
25 is sentenced to 30 days and loss of privileges, or

1 was that before this infraction?

2 A. Yes, sir.

3 Q. Do you know what happened as a result of
4 the last infraction?

5 A. The last infraction, you're talking about
6 the one on August?

7 Q. August, if you know?

8 A. No, I don't know. I don't know if he
9 even went to disciplinary court or not yet.

10 MR. VINSON: I have nothing further, Your
11 Honor.

12 THE COURT: Mr. Odom.

13 MR. ODOM: Briefly, Your Honor.

14

15 REDIRECT EXAMINATION

16 BY MR. ODOM:

17 Q. Officer Wilson, when it says refusing to
18 obey orders, for example, in making up the bunk,
19 that can be a refusal because it's not done in a
20 timely manner, can it not?

21 A. I'm assuming, sir.

22 Q. So, in other words, it's not like, up
23 yours, I'm not going to do it. You can get a
24 write-up because you don't respond as fast as you
25 should respond to that particular order and

1 failing to obey the order? Isn't that true?

2 A. It could be, sir.

3 MR. ODOM: Yes, sir. Pass the witness.

4 THE COURT: Thank you.

5 MR. VINSON: Let us approach, Your Honor,
6 just on one.

7 May I approach, Your Honor?

8 THE COURT: You may.

9 (Whereupon counsel approached the
10 bench).

11
12 RECROSS EXAMINATION

13 BY MR. VINSON:

14 Q. I want you to read this portion right
15 there to yourself, sir.

16 A. Myself?

17 Q. Yes, just read that to yourself. How
18 many times was this defendant here ordered to
19 comply with the rules? How many times was this
20 deputy ordering him to do that from this report?

21 A. If I could see it again. It's kind of
22 hard to read his writing.

23 Q. How many more times? What does that say?

24 A. Three more.

25 Q. Three more times. Three more. So that

1 implies he had already ordered him one time to do
2 it; is that correct?

3 A. Yes, sir.

4 Q. And it took three more times to get
5 compliance; is that right?

6 A. Yes, sir.

7 Q. I have nothing further, Your Honor.

8 THE COURT: Mr. Odom.

9
10 FURTHER DIRECT EXAMINATION

11 BY MR. ODOM:

12 Q. Mr. Wilson, there are a bunch of people
13 in these bunks, are there not? In these cells,
14 there is more than one person, is there not?

15 A. Yes, it is.

16 Q. An officer doesn't go in and shake them
17 on their shoulder and say, get up, make your bunk,
18 for example, does he? He usually shouts from a
19 corridor, does he not?

20 A. Yes, sir.

21 Q. If someone is sleeping, he's got to wake
22 that person up, does he not?

23 A. Yes, he would have to.

24 Q. And there are a number of people, like I
25 said -- how many people do we normally have to one

1 of those blocks?

2 A. Roughly in a block about 60 to a hundred.

3 Q. All right. But when the officer is
4 yelling in there, okay, everybody up, make your
5 bunks, how many people is he normally talking to
6 in that type of situation? Is he talking to 60 to
7 a hundred?

8 A. It all depends if he's broadcasting with
9 all four or five of the pods. They're like in a
10 circle.

11 Q. Right.

12 A. Or he can individually communicate with
13 an individual cell also.

14 Q. All right. You don't know whether the
15 officer was talking directly to Ray Dennes telling
16 him three times to make his bunk or whether the
17 officer was giving an order to make the bunk and
18 he had to give it three times and that the two men
19 that were left were Mr. Acosta and Mr. Dennes,
20 correct, by just looking at that record?

21 A. Looking at that report it seems like he,
22 after he indicated to everyone in the cell to make
23 their bunks, then it appears to me he individually
24 went to Mr. Dennes and Mr. Acosta to make their
25 bunks up.

1 Q. Right, right, and you don't know how many
2 times he had already told them at that point to
3 make up their bunks?

4 A. Just from the report, it's three times
5 from the report.

6 Q. Right, but that is not necessarily when
7 he goes up to them individually. He is telling
8 everybody to make up their bunk normally in the
9 normal course of business, is he not?

10 A. Yes, sir.

11 Q. All right, sir. He tells them to make up
12 their bunk three times. You don't know if that's
13 one on one with Mr. Acosta and Mr. Dennes or
14 whether that's after he's ordered everybody to
15 make up the bunks, he then says that Mr. Acosta
16 and Mr. Dennes are the two persons that after he's
17 ordered three times and that have not made up
18 their bunks, correct?

19 A. Yes, sir.

20 MR. ODOM: Pass the witness.

21 MR. VINSON: I have nothing further.

22 THE COURT: You may step down. Thank you
23 for your testimony.

24 Let's take a 15-minute break, please.

25 (Brief recess).

1 (Jury in jury box).

2 THE COURT: Please be seated. Ladies and
3 gentlemen, this witness has been sworn.

4 Mr. Odom.

5
6 DR. JEROME BROWN,
7 was called as a witness by the Defense and, having
8 been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ODOM:

11 Q. Dr. Brown, would you state your name to
12 the Court and the jury, please.

13 A. Jerome Brown.

14 Q. And how are you employed?

15 A. I am a mental health professional and
16 clinical psychologist.

17 Q. Dr. Brown, tell the jury what that means?

18 A. A clinical psychologist is a person who
19 has been trained at a graduate school of
20 psychology to become versed in the assessment and
21 evaluation and treatment of human mental
22 disorders.

23 Q. And what qualifies you to be in the
24 profession and to refer to yourself as a clinical
25 psychologist?

1 A. Well, I have a Bachelor's Degree in
2 psychology I received from Rice University in
3 1969. I then began attending the University of
4 Houston graduate school of psychology where I
5 completed a Master's degree in 1967 and a PhD
6 degree in clinical psychology in 1969. I then
7 attended a two year internship at the Houston VA
8 medical center, and I've been practicing in the
9 Houston area since that time, about 28 to 29 years
10 now.

11 Q. So if I figure that out right, if you got
12 your PhD in '69 and then spent two years doing
13 your internship, clinical internship at the
14 Houston Veteran's Hospital; is that correct?

15 A. Yes, sir, Houston VA Medical Center.

16 Q. That would put you out around 1971; is
17 that correct?

18 A. I've been licensed by the State since
19 that time, yes, sir.

20 Q. Since that time when you say you're in
21 private practice, what does that mean, Dr. Brown?

22 A. Well, that means that I am -- I have a
23 private practice that I conduct on my own. I see
24 clients, patients, people in various circumstances
25 for psychological assessment and treatment.

1 Q. Now, Dr. Brown, in my profession although
2 there is no degree for it, once we get out, we
3 often specialize in a certain area or a certain
4 field. Do clinical psychologists do the same
5 thing or is it more of a broad field of
6 professionalism?

7 A. It can vary. I guess it's like any
8 profession. You can specialize in a certain area
9 or you can have a more general practice. Over the
10 years I've really developed two areas of
11 practice. I spent about 15 years as assistant
12 department of psychiatry at the Baylor College of
13 Medicine where I did quite a bit of teaching and
14 research. And my private practice continued
15 through that time, but it went in to full-time
16 about 1982 when I went in to full-time practice
17 and went to a clinical position at Baylor. For
18 the past 28 years or so until a couple of years
19 ago, I was the senior psychologist for the Harris
20 County Forensic Psychiatry unit which is a special
21 group of mental health professionals who examine
22 criminal defendants mainly regarding their
23 competency to stand trial and their state of mind
24 or their sanity at the time of the offense.

25 Q. Dr. Brown, when you say that you were the

1 senior psychologist to examine persons in Harris
2 County regarding their mental competency, who
3 would pay you for your services in that regards?

4 A. The contract was paid by the Harris
5 County Mental Health and Mental Retardation
6 Authority.

7 Q. Was that a branch of the County
8 government as you know it?

9 A. Yes, it is.

10 Q. And if someone -- if there was a question
11 as to someone's mental facilities in order to be
12 tried or not to be tried in one of our courtrooms,
13 what is the procedure that would be employed that
14 would involve your expertise?

15 A. Well, we would be assigned the cases on a
16 rotating basis as they would come up on court
17 order from the various Harris County criminal
18 courts. Both the prosecution and/or the defense
19 can file motions with the Court to have their
20 clients examined, have a psychological or mental
21 examination of their clients because they're
22 concerned about their mental well-being or their
23 mental ability to stand trial or their mental
24 state when the offense occurred.

25 The county then provides a group of

1 consultants in this case -- I'm one of them -- to
2 provide these services and report back to the
3 Courts about our findings after the examination is
4 done.

5 Q. Dr. Brown, how many people, if you could
6 guess, do you think you've examined in the past
7 either for the State or the defense that are
8 individuals who have been charged with or were
9 incarcerated as far as criminal activity, how many
10 of those people do you think that you've
11 interviewed and seen and done various tests upon?

12 A. By this time it will be about five to six
13 thousand criminal defendants.

14 Q. Most of those are here in Harris County,
15 Texas?

16 A. Most of them, not all of them, but a good
17 portion.

18 Q. You've had occasion where you've gone to
19 other jurisdictions?

20 A. Yes, I'm sometimes called to other
21 jurisdictions, surrounding counties to perform
22 similar services.

23 Q. Now, did you have occasion to be
24 contacted by someone that is affiliated with
25 myself in regards to a particular case?

1 A. Yes, I was.

2 Q. And who was the person that you were
3 contacted in regards to?

4 A. I think I was originally contacted by Mr.
5 George Parnham who I think is co-counsel on this
6 case.

7 Q. And what was the defendant that he asked
8 you-- what was the person that you were asked to
9 be contacted about?

10 A. The defendant's name was Reinaldo
11 Dennes. He was charged with capital murder.

12 MR. ODOM: Your Honor, at this time I
13 would ask that Dr. Brown be considered an expert
14 for purposes of opinion testimony.

15 MR. VINSON: We have no objection to
16 that, Your Honor.

17 THE COURT: Very well, this witness shall
18 be considered an expert.

19 Q. (By Mr. Odom) Dr. Brown, what do you do
20 when someone asks you, either for the State or the
21 defense, to see a client in order to give opinions
22 regarding that client? What is the procedure that
23 you or any other clinical psychologist would
24 employ initially?

25 A. Well, the procedure usually involves

1 seeing the person in the Harris County Jail.
2 Although that's not one hundred percent true, the
3 great majority of the cases that I've seen have
4 been people who are incarcerated. And this
5 includes Mr. Dennes.

6 The evaluation typically consists of an
7 interview, review of records or talks with what we
8 call collateral sources of information.

9 In this case I did interview Mr. Dennes
10 and did talk with his sister on the telephone
11 about a week after that. And then the admission
12 of a battery of psychological tests which provides
13 additional information about the person's
14 psychological functioning.

15 Q. All right, what are these tests and
16 essentially how long do they take? What all do
17 they involve?

18 A. Well, some of the tests are administered
19 by me and some are what we call self
20 administered. They can be taken by the person
21 that's being tested. The battery that I use is
22 the Rorschach technique, the minimum multiphasic
23 personalities inventory, the 16 personality factor
24 questionnaire, the FIRO-B, the Mooney problem
25 checklist, the Michigan alcoholism screening test,

1 the anger control survey. And I think in this
2 case that was the entire battery of psychological
3 tests.

4 Q. The Rorschach, the Minnesota something or
5 another?

6 A. Multiphasic personality inventory.

7 Q. There is a diagram for that, isn't there?

8 A. MMPI they call it.

9 Q. The 16 personality test, the Mooney?

10 A. Yes.

11 Q. Something the FIRO?

12 A. FIRO it's called.

13 Q. FIRO-B, the anger control, and then the
14 Michigan alcohol screening exam?

15 A. Yes.

16 Q. Each test, does it specifically test to a
17 specific area?

18 A. That varies from one test to the next.
19 They serve active functions and purposes. Some of
20 them are fairly specific. Some of them are
21 general.

22 Q. Do some of them cross-reference or
23 double-check another test?

24 A. Yes, they do.

25 Q. In other words, if you have in one test,

1 if you have a pattern that is not reflected in
2 another test, it might show that there is
3 something you need to look into a little more?

4 A. Right, you would not expect
5 inconsistencies if the person answers consistently
6 about himself.

7 Q. Do the tests have within them to deal
8 with the problem of deception?

9 A. Yes, they do.

10 Q. Explain what kind of problem that is for
11 a clinical psychologist and how the tests are
12 designed, not in great detail but how the test
13 would generally be designed to deal with that
14 problem.

15 A. Well, there is basically three ways a
16 person can provide wrong information about
17 themselves in psychological tests. The first is
18 to deliberately or consciously try to portray
19 one's self as exceptionally virtuous or without
20 problems or without any difficulties,
21 unrealistically good and problem-free.

22 The second way is to portray themselves
23 as unrealistically bad or as being more disturbed,
24 more troubled than they actually are.

25 The third way has to do with a person

1 being confused or they don't understand the items
2 or they don't really know for one reason or
3 another how to answer properly or to present
4 themselves in a consistent way properly. And the
5 tests then are designed to try to pick up those
6 tendencies if they are there.

7 Q. Were the various tests that were
8 administered, were they completed by Mr. Dennes?

9 A. Yes, they were, all of them.

10 Q. Did you establish a pattern in those
11 tests of deception in your opinion?

12 A. In my opinion, no, there was no
13 deception. As might be expected, he did reflect
14 that he is aware that he's being scrutinized, that
15 he was careful in his answers, but there is no
16 evidence of deliberate deception or distortion of
17 the information.

18 Q. Do you also, other than the battery of
19 tests that you give to a defendant or an
20 individual, do you also make, for lack of a better
21 term, an interview or a subjective sort of a
22 nonformalized test that a clinical psychologist
23 would engage in as far as an interview with the
24 person, one-on-one?

25 A. Yes, that was conducted with Mr. Dennes,

1 and I covered with him what I usually cover in
2 interviews like this, things like his family
3 background, his prior criminal history, if any,
4 his use of street drugs and alcohol, his
5 education, his work accomplishments, family and
6 marital information, information about what he
7 understands about the charge against him and why
8 these charges have come about, how he responds to
9 them, information about his early family life and
10 development, the kind of family he came from.
11 Those kinds of things provide important
12 information about the kind of world this person
13 grew up in and lived in and the kind of person
14 they were before this trouble happened.

15 Q. Dr. Brown, what are you looking for, in
16 essence, from a layman's perspective? What is it
17 that you're looking for when you were doing all
18 these various interviews and testing and
19 background checks and various inquiries that you
20 may have gone into with the defendant?

21 A. Well, in this particular case what I
22 would be looking for is some kind of pattern of
23 behavior, some kind of evidence, some kind of
24 information that would demonstrate something about
25 his character as it might relate to the offense

1 itself or his propensity for committing such an
2 offense. In other words, can I in my
3 investigation, in the interview or in the
4 psychological test, find a reason why someone like
5 this might become involved in a situation like
6 this.

7 Q. Now, have you interviewed other
8 individuals that are charged with capital murder
9 before?

10 A. Many.

11 Q. And for both the State and the defense?

12 A. Yes.

13 Q. And are there certain patterns that are
14 sometimes evident with individuals that are
15 charged with crimes like this?

16 A. There are, yes.

17 Q. All right. And what are some of the
18 patterns that you look for as a clinical
19 psychologist in a case like a capital murder case?

20 A. Well, when you're looking at an
21 individual as a professional, we look at human
22 behavior as not occurring in a vacuum. In other
23 words, it doesn't just all of a sudden happen. We
24 think behavior is predictable and understandable
25 and that there should be some relationship. If

1 you have access to the right kinds of information,
2 there should be some way of predicting, not
3 exactly predicting but at least showing that there
4 is some kind of relationship between a person's
5 background, his development, the character he
6 shows as he's growing up and as he becomes a young
7 adult, all the way through the time an offense is
8 committed that would somehow be related or help
9 explain why this offense occurred.

10 Now, there should be some way to
11 understand in terms of the personality variables
12 and the background variables of this person to try
13 to account for why this person had the motivation
14 or developed the motivation to commit this
15 offense. And that way we develop some kind of
16 picture to explain in some kind of way why this
17 happened. And we believe in most cases that human
18 behavior such as this, certainly this
19 extraordinary and this unusual, which is certainly
20 this kind of behavior, murderous behavior, where
21 we should be able to see it somewhere.

22 Q. All right. In other words, someone just
23 doesn't wake up in the morning and decide to go
24 commit a capital murder?

25 A. No, it does not happen that way.

1 Q. Dr. Brown, when you did your analysis,
2 were you aware of certain factors such as the fact
3 that a number of years ago Mr. Dennes had received
4 a public indecency?

5 A. Yes, he did inform me of this during the
6 interview.

7 Q. And what do you know about the public
8 indecency?

9 A. Well, according to Mr. Dennes, he and his
10 girlfriend were caught in a park by a police
11 officer.

12 Q. Is that the sort of behavior that you
13 think contributes towards what you're talking
14 about, the type of behavior that's not in a vacuum
15 that leads to antisocial behavior such as capital
16 murder?

17 A. I'm afraid that has no particular value
18 in this particular case. I mean it is just too
19 many times people make indiscreet types of
20 mistakes like this. It's really of no value.

21 Q. Now, you were informed, were you not, of
22 the possibility, whether it's true or not, of what
23 we call an extraneous matter or an extraneous
24 offense that might have occurred because of Mr.
25 Dennes?

1 A. Yes, sir.

2 Q. Were you informed of the possibility that
3 Mr. Dennes may have been involved in other home
4 robberies?

5 A. I only know of one, I think, that Mr.
6 Dennes made reference to.

7 Q. Yes.

8 A. And I think your office or you made
9 reference to. I only know of one.

10 Q. Did Mr. Dennes at any time say that he
11 was personally involved in a home robbery?

12 A. No. In fact, he said he wasn't but he
13 does know that he's accused of that.

14 Q. Now, did you get a time reference that
15 that home robbery occurred at or near the time of
16 the alleged capital murder offense?

17 A. It's my understanding it was somewhere
18 around then.

19 Q. Knowing that, would that be a prior act
20 that fills in some of the information that you're
21 talking about, this prior behavior that would lead
22 up to criminal, capital murder type activity?

23 A. Well, no, not in and of itself. That
24 would also be of no value. However, a pattern of
25 criminal behavior might be expected. We do see

1 that with other individuals charged with these
2 types of serious crimes, and I would expect some
3 kind of pattern of criminal behavior.

4 Q. That's what I'm really asking. In your
5 testing based upon your experience, did you see a
6 pattern of criminal behavior prior to the events
7 in or around the dates we're talking about?

8 A. Actually, no. Mr. Dennes is 41 years old
9 now, and to my knowledge there is no pattern of
10 any type of aggressive or criminal behavior
11 whatsoever until these recent episodes emerged.
12 And in my experience it's very, very unusual to
13 see this start happening at a relatively late age
14 in life. You know, when people start committing
15 criminal behavior, typically they're much
16 younger. Young people tend to commit the crimes
17 in our society more than the older people.

18 Q. Would you call this a normal case, or
19 would you call this an unusual case? How would
20 you categorize this case?

21 A. I think this is an extraordinary case.
22 It's one of the most unusual cases I've ever
23 seen. Certainly of all the capital murder cases
24 I've seen, this may be the most extraordinary in
25 terms of the lack of information that would

1 suggest this person would be capable of such
2 behavior.

3 Q. Do you have any evidence of a normal home
4 life on the part of the defendant?

5 A. Everything I could tell, including talks
6 with the sister, indicates that he had a very
7 normal upbringing,. His family was stable. His
8 parents are still married. They were strict,
9 conservative parents. The father brought him into
10 the jewelry business fairly early in his life and
11 taught him everything he knew. And he picked that
12 up and went on with it.

13 Q. You say he picked it up and went on with
14 it. What do you mean by that remark?

15 A. He became a jeweler himself. He went
16 into the jewelry business fairly early.

17 Q. What about in regards to his family, his
18 immediate family in the sense of wife and
19 children?

20 A. Well, Mr. Dennes reported two marriages.
21 The first marriage lasted 20 years. We never see
22 this on death row. And he continued to provide
23 child support for his children after this. One of
24 his children is now a college student doing very
25 well. He still pays child support for his

1 12-year-old daughter.

2 He married for a second time about four
3 years ago, and that marriage is still stable. His
4 wife is still sticking by him through these
5 difficult times. And a child --

6 Q. That's my next question. How old is the
7 child to that marriage?

8 A. The child is nine months old. His wife
9 was pregnant just about the time he was arrested.

10 Q. Do you know if that's a male or female
11 child that he has in that regards?

12 A. I think it's a son.

13 Q. Now, in regards to family life and to
14 work life, he appears to have normal behavior for
15 society and normal behavior for someone that you
16 would normally be viewing as someone on death
17 row. Is that a fair statement?

18 A. I think it's extremely fair. This person
19 is not that much different, as far as I can tell,
20 from the person walking down the street that you
21 might find anywhere downtown.

22 Q. Now, Dr. Brown, let me ask you some
23 questions in regards to what you can and can't do
24 in your profession. No. 1, is it possible to
25 predict what someone's future behavior will be

1 like?

2 A. The professional position that is taken
3 at this point by our professional societies,
4 specifically by the American Psychological
5 Association, is that the state of science is not
6 such that human behavior can be predicted more
7 than a few days in advance.

8 Q. Do you agree with that position?

9 A. As far as everything I know, that's the
10 truth. We cannot really do that, especially with
11 regard to something like future episodes of
12 violence, years into the future. There is simply
13 no method, no ways that we have, common sense,
14 scientific research, prior episodes, anything to
15 use that would be predictive of human violence in
16 the future.

17 Q. If you cannot predict future
18 dangerousness or future behavior on the part of a
19 person, what is it that you primarily rely on in
20 order to try to make determinations regarding that
21 personality type that may or may not pose future
22 danger or not pose future danger?

23 A. Well, there are certain personality types
24 or personality disorders as we call them that have
25 a higher rate of criminal behavior than other

1 personality types.

2 Q. Give me an example.

3 A. Well, in other words, there are
4 categories of human mental disorders including
5 what we call personality disorders, long term
6 personality characteristics that are
7 maladjustments that don't fit in the world or get
8 people in trouble. And certain kinds of these
9 personality disorders do show higher rates of
10 criminal behavior than other types of human mental
11 problems or human mental disorders.

12 Q. Did Mr. Dennes display any of those
13 personality types?

14 A. He did not. There is no way he could be
15 categorized as the type of personality disorder,
16 specifically an antisocial personality disorder.
17 There is no way you can make this diagnosis of
18 this man.

19 Q. Obviously I'm a layman in this type of
20 conversation, and I hear the term thrown around,
21 "a sociopath." That's what I read in the paper.
22 That's what I hear about. Is that an incorrect
23 term or is that a correct term? Do you guys use
24 that term?

25 A. It's what now would be called an old

1 fashioned term for the same category. These
2 people used to be called sociopaths. They're now
3 called antisocial disorder. But the truth is
4 they're really the same thing.

5 Q. A person that exhibits antisocial
6 personality disorders, what is it that they
7 exhibit that you do not see reflected in Reinaldo
8 Dennes?

9 A. Almost none of the characteristics. But,
10 for example, let's talk about problems with
11 authority. There is no evidence of violations of
12 the law, problems breaking the rules over and over
13 again. There is no evidence of callous or
14 cold-blooded behavior toward other people or
15 inability to form attachments and closeness to
16 other people. They show repeated criminal
17 behavior. They demonstrate problems with what we
18 would call impulse control. They have trouble
19 putting aside their needs of the moment for longer
20 term goals. They're concerned about gratifying
21 themselves immediately. These people are
22 sensation seeking as we call them. They look for
23 stimulus in something thrilling and exciting.
24 They're typically seen as shallow and superficial
25 although initially friendly and gregarious. The

1 only thing that Mr. Dennes has in his history that
2 might be one of the items on a checklist for this
3 type of disorder is the history of alcohol abuse
4 and street drug abuse.

5 Q. Talk to me about that.

6 A. He does report that, although that's
7 characteristic with many other types of disorders,
8 too. But Mr. Dennes does acknowledge that he is
9 drinking very heavily, that he's probably an
10 alcoholic. He has been using cocaine on a regular
11 basis although it does not appear heavy, but
12 frequent and regular. And he also uses marijuana.

13 Q. When you say that he doesn't show
14 aggressive behavior or he doesn't show selfish
15 behavior or cold-bloodedness, now, are you
16 referring to the facts as recited to you in this
17 case or are you referring to the facts that you
18 know of his past life up and until the time of the
19 facts of the case?

20 A. I'm talking about the latter. In other
21 words, the offense itself cannot be denied. It is
22 what it is. It's a terrible offense. But I'm
23 saying that if I had seen this man a year before
24 all this thing began, six months, there is no way
25 I could have told you this man is in danger of

1 doing something violent because he has no record
2 of violence of any kind that I can determine at
3 all. There is just no evidence of it at all. It
4 doesn't exist.

5 Q. Dr. Brown, in your opinion would Ray
6 Dennes do well in an institutional type of
7 background or setting?

8 A. Well, there is no reason he wouldn't make
9 the same adjustment to whatever future settings
10 he's in as the adjustment that he's made in the
11 past. In other words, once again, his record has
12 fairly been fine and he shows, you know, capable
13 adjustment. He manages his responsibilities
14 apparently. He takes care of the people that he
15 cares about. And he'll carry out any
16 responsibilities or rulings or whatever that he
17 has to carry out in an appropriate way, I would
18 say.

19 Q. Does Mr. Dennes appear to have any type
20 of philosophical or metaphysical commitment
21 towards religion one way or the other?

22 A. Well, he does express a strong religious
23 commitment. Of course, that's not unusual for
24 people who get in this kind of situation. But he
25 certainly seems to be carrying it out fairly

1 vigorously. He's reading quite a bit. He's
2 educated himself quite heavily in this area and
3 seems to believe pretty strongly. I think that's
4 reflected in his basically optimistic point of
5 view that he seems to maintain in spite of the
6 terrible circumstances that he's in.

7 Q. What are you showing -- do your records
8 reflect his date of birth, Dr. Brown?

9 A. Yes, uh-huh.

10 Q. What is his date of birth?

11 A. February 9th, 1956.

12 Q. You had indicated earlier that very often
13 criminal activity occurs when someone is younger.
14 In your business as a psychologist, do you see age
15 as having an influence on making more or less of a
16 likelihood for certain criminal behavior,
17 especially violent behavior?

18 A. Yes, yes, there is a correlation.

19 Q. What is the pattern that you as a
20 clinical psychologist see in regards to the effect
21 of age upon violent criminal behavior?

22 A. Well, violent or other forms of serious
23 criminal behavior tend to peak in the twenties for
24 men and it tends to start diminishing after that
25 when it hits the age of fifties. In the fifties,

1 especially the late fifties, it drops off
2 dramatically, both the recidivism rate, the repeat
3 rates of criminal behavior, return to prison, and
4 original offenses or first time offenses drop off
5 dramatically in the fifties.

6 Q. If you were to factor in a 40 year
7 commitment at a minimum on Mr. Dennes, which would
8 put him not eligible for parole until he was 81
9 years old, do you think that someone who is 81
10 years old has an even more or even less of a
11 tendency to be violent and have violent
12 tendencies?

13 A. Well, of course, the answer is no. I
14 mean I think even probably lay people know that
15 there is just not many 81 year old criminals
16 running around.

17 Q. Now, I have told you, I believe, in
18 certain factors that are reflected in Defense
19 Exhibit No. 1, that is that Mr. Dennes has
20 received a couple of what I called minor
21 infractions while he's been in custody.

22 Do you view an infraction such as not
23 wearing a shirt or not making up a bed when you're
24 told to on time, do you view that as systematic of
25 the type of behavior you've been talking about

1 that reflects these antisocial or what I call -- I
2 forgot your name for it, but the psychopathic type
3 of behavior that you're familiar with and that you
4 see?

5 A. No, this would not be of value at all
6 because, as one might imagine, the jail
7 environment is very strict and very structured and
8 it's hard to find anyone in the jail who doesn't
9 have some kind of infraction of some kind if
10 they're there for any length of time. And things
11 like not making your bed, I mean, this is -- no
12 one in jail could avoid something like this
13 happening if they're in jail for months or a year
14 or something like that.

15 Q. If Ray Dennes had been in jail for over a
16 year and a half, would you expect to see if he was
17 the type of classic characteristic of a -- what
18 did you call it again?

19 A. Antisocial personality.

20 Q. Antisocial personality, what would be the
21 type of infractions that you would expect to see
22 in an antisocial -- what you are calling an
23 antisocial type person?

24 A. Fighting, abusing other inmates,
25 predatory behavior, taking advantage of other

1 inmates, chronic rule violations, stealing, things
2 like this.

3 Q. Dr. Brown, as best you can tell, when
4 someone performs well --

5 MR. VINSON: Your Honor, I'm going to
6 object to the continuous leading questions.
7 That's what he's been doing for a while. I'm
8 going to object at this time to his leading
9 questions.

10 THE COURT: For the purpose of
11 expediency, I'll give you a little leeway, but
12 I'll sustain that objection.

13 MR. ODOM: Yes, sir.

14 Q. (By Mr. Odom) Dr. Brown, when a son or a
15 sibling performs well, can you state as a
16 psychologist whether or not that has some bearing
17 on a type of influence or role model of parents?

18 A. Well, usually you attribute some good
19 performance on the child's part to the influence
20 of his parents.

21 Q. Has it been your experience that even
22 in a penitentiary type of environment that a
23 person --

24 MR. VINSON: Again, Your Honor, I'm going
25 to object to the leading question. Has it been

1 your experience. Ask him what his experience has
2 been.

3 THE COURT: Sustained.

4 Q. (By Mr. Odom) What, if any, knowledge do
5 you have regarding whether a father can continue
6 to be an asset to his son in a penitentiary type
7 of environment?

8 A. Well, I've certainly seen many criminal
9 defendants who have been in prison before who tell
10 about their experiences and who relate their
11 experiences with their family, how they deal with
12 their family over the years that they're in
13 confinement, things like that, sure.

14 Q. In reverse, are you qualified to answer
15 the question as to what effect execution would
16 have on either a young son or a son who is old?

17 MR. VINSON: I'm going to object to
18 speculation, Your Honor.

19 MR. ODOM: Well, if you can, Judge.

20 THE COURT: I sustain the objection.

21 MR. ODOM: Pass the witness, Your Honor.

22 THE COURT: Thank you, Mr. Odom. Mr.
23 Vinson.

24 MR. VINSON: May I proceed?
25

CROSS EXAMINATION

BY MR. VINSON:

Q. Good afternoon, Dr. Brown. How are you doing?

A. Fine, thank you.

Q. Now, at the time that you interviewed Mr. Dennes, did you make some notes?

A. Yes, I did.

Q. And do you have all your notes with you today?

A. I have everything, yes.

MR. VINSON: Your Honor, may I have an opportunity to look at the notes?

THE COURT: Certainly.

MR. VINSON: May I approach, Your Honor.

THE COURT: Yes.

(Whereupon counsel approached the bench).

MR. VINSON: What I'll do, I'll continue to question and Mr. Smyth may review the notes.

THE COURT: Thank you very much. I appreciate that.

BY MR. VINSON:

Q. Let's start off, sir, with the basic premise that there is something in a person's background that keeps them from engaging in

1 serious acts of criminal conduct. Correct?

2 A. That's hard to find but, sure, go ahead.
3 I'll go with you on that.

4 Q. Well, first of all, the perception that
5 one has of himself, while I won't do this, I will
6 not engage in this offense because I don't want
7 others to think I'm this type of a person.
8 Correct?

9 A. Sure.

10 Q. I will not engage in this type of offense
11 because I don't want my parents to realize I'm
12 this type of a person. Right?

13 A. Okay.

14 Q. And then you can also say, I'm not this
15 type of a person. So irrespective of what others
16 think about me, I'm not going to engage in this
17 type of offense, correct?

18 A. Sure.

19 Q. Those are the safeguards that keep all of
20 us from going out here and committing these
21 offenses, correct?

22 A. Of course.

23 Q. And those are instilled in us at an early
24 age --

25 A. That's correct.

1 Q. -- supposedly. Now, when you talked to
2 this defendant, Mr. Dennes here -- and I take it
3 that this man here at counsel table in the green
4 jacket here, this is the person that you spoke
5 with?

6 A. It is, yes.

7 Q. And where did you speak with him?

8 A. In the Harris County Jail.

9 Q. Can you tell us on what day that was?

10 A. August 13th, I believe.

11 Q. August the 13th of 1997?

12 A. Right.

13 Q. That's the first time you saw Mr. Dennes?

14 A. Yes.

15 Q. And the first time you've talked with Mr.
16 Dennes?

17 A. That's correct.

18 Q. And how long was that conversation?

19 A. Oh, probably a couple of hours.

20 Q. And did you give Mr. Dennes any tests at
21 that time?

22 A. Yes.

23 Q. What tests did you give him at that time?

24 A. I administered the Rorschach to him
25 myself directly and then gave him the other --

1 Q. The spelling on that is R-o- --

2 A. R-o-r-s-c-h-a-c-h.

3 Q. And tell the ladies and gentlemen of the
4 jury what type of test that is.

5 A. Well, basically it's been called the ink
6 blot test.

7 Q. Right. And everything looks like a
8 butterfly or something of that nature, isn't it?

9 A. Well, if you're an antisocial
10 personality, you don't see butterflies.

11 Q. But it kind of looks like a butterfly.
12 Is that the ink blot test, right?

13 A. I guess that's what you saw, Mr. Vinson.

14 Q. You gave it to him, Dr. Brown, did you
15 not?

16 A. Yes, I did.

17 Q. And how long did that test take?

18 A. Oh, probably 30 minutes.

19 Q. All right. And what other test did you
20 give him, sir?

21 A. Well, the rest was a packet of tests for
22 him to fill out on his own. Those are
23 self-administered.

24 Q. Okay, and would one of those tests be the
25 Minnesota multipersonality inventory test?

1 A. Right.

2 Q. That's called the MMPI?

3 A. MMPI.

4 Q. And what type of test is that?

5 A. It's a personality test. Basically it's
6 both a personality and a test to determine certain
7 types of psychiatric or mental disorder
8 categories.

9 Q. How many questions are on that test?

10 A. It has 566 true/false items.

11 Q. And you had to leave that test for him to
12 take?

13 A. Yes. It takes a couple of hours, three
14 hours to fill out. It's pretty long.

15 Q. What other tests did you give him?

16 A. Sixteen personality factor questionnaire.

17 Q. Sixteen?

18 A. Personality factor questionnaire.

19 Q. And how long did that take?

20 A. That takes about an hour and a half to
21 two hours to complete. It has -- I think it has
22 186 items on it, something like that. There are
23 three choices on those items.

24 Q. 186 items, about an hour and a half to
25 take. Okay. Did you have to leave it with the

1 defendant as well?

2 A. Yes, I did.

3 Q. Okay. What other tests did you take?

4 A. Well, the Mooney problem checklist.

5 Q. Mood?

6 A. Mooney problem checklist. This is a list
7 of psychological symptoms and difficulties people
8 can have. They underline the different things
9 that are bothering them. There is about something
10 like 188 items, something like that, on that one.

11 Q. Okay. About how long does that take to
12 complete those questions? It depends on the
13 person?

14 A. Yes, I would say probably, maybe an hour
15 to go through those.

16 Q. And that was left to the defendant to
17 administer to himself?

18 A. That's right.

19 Q. Now, what else did he take?

20 A. The FIRO-B is another one. That's a
21 little bit shorter. I think it has about 50
22 items. It possibly takes about maybe 30 minutes
23 to take.

24 Q. And that's called --

25 A. FIRO-B, it's called.

1 Q. And what is the purpose of that test?

2 A. This gives us information about the way a
3 person relates to other people in three important
4 behavioral categories, what we call inclusion,
5 control and affection and the degree to which
6 that's expressed by them or wanted by them.

7 So there is actually six categories of
8 scoring on that.

9 Q. And so from that test you try to
10 determine how a person relates to others?

11 A. Yes, uh-huh.

12 Q. And how long does it take to take that
13 test?

14 A. I think I said about 30 minutes on that,
15 something like that.

16 Q. Was that also something the defendant
17 self-administered?

18 A. Yes, it was.

19 Q. What other test did you take?

20 A. Michigan alcoholism screening test. I
21 think it has about 20 items. It only takes maybe
22 10 minutes to complete.

23 Q. And that was left with him as well?

24 A. Yes.

25 Q. And this is in no way to embarrass you,

1 Doctor, just a fact. There is no way that you can
2 tell the ladies and gentlemen of the jury that the
3 defendant filled out all those tests himself, is
4 there?

5 A. Well, there is no way to say for sure. I
6 don't have much choice about it. But I guess he
7 could give it to his cell mate to take. That
8 would be very foolish. But maybe he would. I
9 don't know. It's theoretically possible, sure.

10 Q. You couldn't say -- sit here and actually
11 say he took those tests?

12 A. I didn't see him take them, no.

13 Q. And it is -- it is just the way it
14 works. It's not that you had not stayed and taken
15 the test. It is just that he was in the location
16 that he was?

17 A. Well, not only that. You just can't sit
18 and watch someone fill out tests for seven or
19 eight hours which is what we're looking at.

20 Q. Right. Now, doctor, I think of something
21 you did hit on that was very interesting. In all
22 these tests, they are just tests. They're just
23 paper tests, correct?

24 A. That's right, they are.

25 Q. And even some of these tests they have

1 had in Reader's Digest and things like that,
2 little self analysis, right?

3 A. No, these tests haven't been in Reader's
4 Digest, I wouldn't think. They're not allowed to
5 be published.

6 Q. I understand. But what I'm saying,
7 Doctor, they're similar to tests you see in
8 Reader's Digest where if you take this test and
9 you answer this question, you answer this
10 question, you can almost determine your longevity,
11 how long your going to live or how many or how
12 much rest --

13 A. Well, I don't want to minimize --

14 Q. And I'm not.

15 A. -- the tremendous amount of research and
16 work that has gone into the establishment of the
17 norms of profiles. We're talking about thousands
18 and thousands of people who have been provided the
19 normative samples for all of these tests. And
20 they're very widely used. But some of the tests,
21 like you said something about longevity. I think
22 some of those have been researched pretty well and
23 they do have pretty good research underpinning
24 that would make them pretty valid tests like the
25 ones that we're talking about today.

1 Q. What I'm saying, if one wanted to sit
2 there and take that test, then one could fudge on
3 that test, correct?

4 A. Well, I don't know which test you're
5 talking about. The longevity test, yes, you could
6 lie on that, sure.

7 Q. Sure. Now, you said another thing, that
8 human behavior is predictable and understandable,
9 correct?

10 A. Yes, it is; not always predictable. I
11 don't want to use the word the same way we're
12 using the word here like predicting violence. But
13 I think human behavior is understandable. It has
14 some kind of antecedents. There is some kind of
15 chain of causal relationships that you can
16 understand. In other words, people have
17 personalities. We all know that.

18 Q. I'm just referring to what you're
19 testifying to. And at that time you said that
20 human behavior is predictable and understandable.

21 A. Yes, it is. I think that's true.

22 Q. I wrote it down as you said it.

23 A. Oh, uh-huh.

24 Q. Now, you also stated that if Mr. Dennes
25 had taken the same test that you administered at

1 the jail, assuming he did take the test, same test
2 you took, you could not have made any predictions
3 about his future conduct?

4 A. That's right.

5 Q. So the test in itself doesn't help you
6 with respect to determining one's future conduct?

7 A. It doesn't.

8 Q. The test in itself only stands for
9 whatever it stands for, correct?

10 A. That's right.

11 Q. And at that particular point in time,
12 correct?

13 A. At that particular point in time, that's
14 right.

15 Q. Now, I think you said you all discussed
16 one armed robbery. Okay. Do you have the data of
17 that armed robbery?

18 A. No, Mr. Dennes was very vague about
19 this. He said that he knew that he was accused of
20 this, of some kind of break-in robbery or
21 something like this, and that he did not do it.
22 So he didn't have that much to say about it.

23 Q. But he was aware at the time that he
24 talked to you that he at least was a suspect or
25 had some allegation that he had something to do

1 with it?

2 A. Yes, he did report that.

3 Q. I think you also testified that there was
4 no pattern of criminal behavior until the recent
5 episode?

6 A. As far as I can tell, there is not.

7 Q. Now, what were you told about the recent
8 episode, if you can recall?

9 A. I can't remember a lot of that without my
10 notes, but apparently he's accused of --

11 MR. VINSON: Wait just a minute, Doctor.

12 May I approach, Judge?

13 THE COURT: You may.

14 Q. (By Mr. Vinson) Why don't you take a
15 look at your notes there.

16 A. He said that he had been accused by a man
17 named Tony Ramirez of conspiring to create a plan
18 to rob one of his co-tenants in the building where
19 he worked or something like this, another jewelry
20 business of some kind, and that he would be
21 accused of doing things like using his office
22 machinery to make a silencer or something like
23 this and that Mr. Ramirez would say that after
24 they planned on doing this that apparently Mr.
25 Dennes went ahead without him and did it on his

1 own or he and his brother, I think, are accused of
2 doing it and that he's now accused of killing
3 during the robbery the store owner in the building
4 where he worked, the co-tenant, and shooting a
5 security guard, which he says the security guard
6 was not killed, thank God, and he'll probably say
7 that they planned it together. And he's also
8 accused of somehow there is a cleaning lady that's
9 involved that said he paid her five thousand
10 dollars and that they were lovers. He would say
11 something about that. He mentioned something
12 about this, but I don't know how it developed the
13 offense itself.

14 Q. Now, even after having discussed that
15 with Mr. Dennes, you still could not pick up any
16 information from those tests that would show you
17 that Mr. Dennes was capable of committing that
18 type of an offense, could you?

19 A. Honestly, I cannot find it. I do not see
20 this offense in this man.

21 Q. You're not saying he didn't do it; you're
22 just saying the tests that you rely upon, you
23 could not predict that type of conduct?

24 A. No, these are not lie detector tests, for
25 example.

1 Q. These are what?

2 A. They're not lie detector tests. I can't
3 tell if he's telling me the truth, no, I just
4 can't find the capacity. That's what I said,
5 that's what I look for, the capacity or the
6 motivation to do something like this. I don't
7 know whether he actually did it.

8 Q. And what do you mean this is an
9 extraordinary case?

10 A. Well, as I said earlier, I've seen many
11 people who are now on death row. And of those
12 people on death row, I can really understand, I
13 know why they're there and I know what's in them
14 that put them there. In this case, the question
15 is unanswered. I have no idea why this man
16 committed this offense. And if he goes there, I
17 will never understand why to this day. That's the
18 best I can say. I can't explain this.

19 Q. Okay. Why he committed the offense?

20 A. Right.

21 Q. And you can't tell the ladies and
22 gentlemen of the jury he would not do it again?

23 A. I can't say that.

24 Q. You can't tell the ladies and gentlemen
25 of the jury that he would not engage in other acts

1 of violence?

2 A. I can't say that.

3 Q. I understand that. Now, this is because
4 you can't -- you couldn't even predict his conduct
5 if you were to have given him that test without
6 even knowing that he was engaged in an offense,
7 correct?

8 A. That's right. This has really stumped
9 me.

10 Q. All right. Did the marriages have
11 anything to do with it?

12 A. Not that I can tell. They were fairly
13 stable marriages. He maintains a good
14 relationship with his ex-wife today. He pays
15 child support. He was married 20 years the first
16 time. There is no history of violence in the
17 marriages. The sister reports that there is no
18 history of violence that he's ever done to anyone
19 before. I can't explain it.

20 Q. Now, you stated that he appeared to have
21 the normal behavior that is consistent with a
22 person walking down the street?

23 A. As far as I can tell, that's the way it
24 is. I mean, you know, he's certainly no angel;
25 but, again, in terms of before this began, his

1 story is a story that anyone could have.

2 Q. And knowing that, he appears to be
3 normal, you know, doesn't appear to have any horns
4 on his head or any signs of violence coming your
5 way, he can get close to people, can he not?

6 A. Yes, he can.

7 Q. And he can gain people's confidence, can
8 he not --

9 A. Yes, he can.

10 Q. -- based upon what you found out about
11 him?

12 A. Yes, I think he could do those things.

13 Q. And depending on how strong he gained
14 that person's confidence, he could possibly
15 persuade them to engage in offenses, could he not?

16 A. Again, that capacity I don't know about.
17 I don't know. I don't see that kind of predatory
18 level kind of motivation.

19 Q. But you didn't see that in him. But
20 would it shock you to know that he was the one who
21 planned the offense?

22 A. It would shock me, yes.

23 Q. All right. The jury has already made
24 that determination.

25 A. Well, I know. I mean that's the nature

1 of this offense. But I can't explain it to you.

2 Q. Have you ever heard of Kenneth McDuff?

3 A. Oh, yes.

4 Q. Who is Kenneth McDuff?

5 MR. ODOM: Objection, Judge. That's
6 beyond the scope of the fact of the matter of this
7 case.

8 MR. VINSON: Can we approach, Judge.

9 THE COURT: Okay.

10 (Whereupon counsel approached the bench).

11 MR. VINSON: He's going into future
12 dangerousness with this witness. He's an expert.
13 If he knows of Kenneth McDuff, I can bring it
14 out. Mr. McDuff was a model prisoner. He came
15 out of T.D.C. What did he do? He killed again.
16 The same thing with the model prisoner Richard
17 Speck. He came out of the Texas Department of
18 Corrections, went to Chicago and offed about seven
19 nurses. And we can do this and he has had similar
20 conduct where he persuaded people to release him.

21 MR. ODOM: He's not trying to establish
22 similar conduct at all. He hasn't established
23 that Kenneth McDuff's personality patterns --

24 THE COURT: How do you think she's taking
25 down both of you all talking at the same time?

1 MR. ODOM: Unless he shows that the
2 personality traits that Dr. Brown is talking about
3 is similar to that of Kenneth McDuff, then it
4 would be an improper hypothetical. It would be an
5 improper area of cross examination.

6 THE COURT: Sustained. Let's move along
7 BY MR. VINSON:

8 Q. You remember when the defense attorney
9 had you on cross examination --

10 MR. ODOM: Direct examination.

11 Q. -- and he started asking you about other
12 people on death row and what traits they
13 exhibited? Do you recall that, sir?

14 A. I remember making a comment about that.
15 I don't recall him asking me directly but, okay.

16 Q. Well, I think that's the way it
17 supposedly came up.

18 A. Okay.

19 Q. Well, you are familiar with some of the
20 patterns of people on death row; is that correct?

21 A. Oh, yes. Yes, I am.

22 Q. And have you studied some of the history
23 of people before they got to death row?

24 A. Yes.

25 Q. And have you studied the history that

1 will show you that at some point in their life
2 they did not exhibit the same characteristics that
3 led them to death row?

4 A. Not in any reasonable way. You know,
5 when they're all children, they don't do too
6 much. But after that --

7 Q. I'm talking about adults. I'm talking
8 about adults. Have you ever examined someone who
9 is charged with the offense of unauthorized use of
10 a motor vehicle?

11 A. Oh, yes, of course.

12 Q. That's the only offense?

13 A. Right.

14 Q. And then at some later point in time they
15 commit a capital offense. Have you ever been
16 engaged in that?

17 A. Yes.

18 Q. Could you make that determination at that
19 time that that person was going to go out and
20 commit a capital?

21 A. Not just on the basis of a car theft
22 charge, no.

23 Q. Now, you say there was no evidence of any
24 cold-bloodedness, I guess is my interpretation,
25 attitude or behavior towards others?

1 A. No. In fact, just the opposite.

2 Q. Well, would this constitute a
3 cold-blooded attitude toward another, to approach
4 an unarmed guard --

5 MR. ODOM: Judge, I object. I believe
6 the question was other than in the facts of this
7 case did he exhibit any cold-blooded behavior.
8 And I think he's mischaracterizing the question
9 and answer that was posed to the witness.

10 THE COURT: That's overruled.

11 Q. (By Mr. Vinson) Would this be
12 cold-blooded toward another human being, an
13 attitude or conduct, to approach an unarmed guard,
14 knowing in advance that the guard is unarmed, walk
15 right up to him, place your hand on his shoulder,
16 put a firearm in his chest and squeeze a round
17 off? Would that give you, would that be an
18 example of someone being coldhearted?

19 A. Could be, yes, could be.

20 Q. Show a callous disregard for human life?

21 A. Yes, certainly.

22 Q. Let's take it a step further. The person
23 falls to the floor reacting to the gunshot, the
24 defendant can obviously see the person is still
25 alive, then fires another round into their body.

1 I mean how calloused can you get, Doctor?

2 A. That's very calloused. That's terrible.

3 Q. Total disregard for human life, is it
4 not?

5 A. Yes, it is.

6 Q. But you couldn't pick that up in your
7 tests of the defendant?

8 A. I could not.

9 Q. Even after he committed such offense?

10 A. That's right.

11 Q. Now, you said the defendant now expressed
12 strong religious commitment?

13 A. Yes.

14 Q. When did this come about?

15 A. Well, he acknowledged this has mainly
16 taken place after his arrest when he wasn't able
17 to use alcohol, abuse street drugs. He started
18 realizing what he was doing to himself.

19 Q. Now, Doctor, I guess what I'm trying to
20 do is just get you to communicate to us if you
21 know when did the religious commitment come
22 about. Was it after the offense was committed or
23 before the offense was committed?

24 MR. ODOM: He just answered that
25 question. Asked and answered.

1 MR. VINSON: I missed it.

2 THE COURT: Go ahead.

3 THE WITNESS: After the offense. After
4 his arrest.

5 Q. (By Mr. Vinson) Because, in fact, when
6 he was growing up, he was not very religious,
7 correct?

8 A. Not very, no.

9 Q. The marriage apparently was not that
10 stable, as you testified to?

11 A. Twenty years.

12 Q. Twenty years?

13 A. That's pretty good. It's much better
14 than average. The average American marriage lasts
15 about seven years.

16 Q. Did he make any admission to you about
17 other relationships during his marriage?

18 A. Yes, he admitted to infidelities.

19 Q. For how many years?

20 A. I didn't ask him that.

21 Q. Well, you made a note on here, unfaithful
22 for five years?

23 A. Oh, I'm sorry. Yes, I did. I didn't
24 remember that.

25 Q. Well, he didn't tell you he was on

1 cocaine at the time this offense was committed,
2 did he?

3 A. He was using alcohol -- yes, he said --

4 Q. He said he was on cocaine when it was
5 committed?

6 A. Again, he didn't say to me that he
7 committed this offense, but he did state that
8 around that time he was using cocaine, yes.

9 Q. Well, let's assume he was using cocaine.
10 Cocaine, isn't that another antisocial type of
11 behavior by one, to know what the law is and then
12 to go ahead and violate it?

13 A. Now you're getting in to difficult
14 territory. Cocaine use is very widespread. It's
15 used by many segments and strains of society.
16 It's used as a recreational drug by many people
17 who have no other -- .

18 Q. I'm not asking you for what purpose it's
19 used. I'm asking you, is that a known violation
20 of the law?

21 A. Oh, it certainly is that, yes, it is.

22 Q. But if he hadn't made that admission to
23 you, you couldn't have picked that up with your
24 test, could you?

25 A. Well, no, there is no way I could tell he

1 would be using cocaine unless he told me.

2 Q. Incidentally, did you take a urine sample
3 or anything to verify what the defendant was
4 telling you?

5 A. He's been in the jail for a year and a
6 half. There is no use to do that.

7 Q. Fair enough. That's the first time that
8 admission was made to you?

9 A. Yes, uh-huh.

10 Q. Did he tell you he was intoxicated at the
11 time, not that he was just an abuser of alcohol
12 but that he was intoxicated at the time he
13 committed the offense, the alleged offense?

14 A. Well, at the rate he was drinking, he was
15 intoxicated every day. So, yes, of course he was
16 intoxicated then. He was intoxicated every day
17 for a long time. He was drinking very heavily.

18 Q. Then did he also tell you about his
19 fascination for weapons?

20 A. Yes.

21 Q. Including guns, knives, switch blade
22 knives, rifles, hand guns?

23 A. Yes.

24 Q. Did he tell you of any acts of
25 compulsion?

1 A. Well, that's the word he used. I
2 wouldn't use that word. But I would say that,
3 yes, he bought a car on impulse, yes.

4 Q. What type of car was that?

5 A. I think it was a BMW, but I'm not
6 positive about that.

7 Q. It's unfair to you, Doctor, under these
8 circumstances, but your notes here say Acura NS?

9 A. I'm not reading my notes in detail. I'm
10 trying to recall as I'm going along. Okay, that
11 sounds fine, Acura, right, Acura Legend.

12 Q. The defense also brought, I think, to the
13 jury's attention through you how a father can
14 influence his son. Is that a fair statement?

15 A. Right.

16 Q. Doctor, have you ever heard of two young
17 men growing up under the same father's discipline,
18 living in the same bedroom or sharing the same
19 bedroom until they reach an age where they're in
20 their own individual rooms or what have you, and
21 one leaves home and goes out and makes a success
22 of himself and the other leaves home and turns to
23 criminal behavior?

24 A. Yes.

25 Q. Have you heard of that?

1 A. It does happen.

2 Q. So that is nothing unusual, is it?

3 A. Not unusual.

4 Q. You have seen that?

5 A. Yes.

6 Q. And also to find religion after the fact,
7 that's nothing unusual about that, is it?

8 A. No. No, that does happen.

9 Q. Then what one is attempting to do is
10 salvation, if that's true, of their own soul. But
11 what about the soul of the person whose life they
12 took? What about the salvation of that person?

13 A. There is no salvation for them through
14 their behavior, their own salvation, of course.

15 Q. And your testimony is, I think, that
16 people begin to engage in criminal conduct less
17 and less as they grow older and older?

18 A. That's right.

19 Q. Now, but actually this defendant here has
20 gone past that age of 20-something years old,
21 hasn't he?

22 A. He has.

23 Q. Well, were you also able to predict, make
24 any predictions based on the fact that he told you
25 about this other suspected criminal conduct where

1 a home invasion was committed in this county?
2 Were you able to make any future prediction on
3 that?

4 A. No.

5 Q. In essence, Doctor, the test that you
6 took, in spite of the defendant's conduct, your
7 profession wouldn't permit you to make a
8 prediction; isn't that right?

9 A. That's right.

10 Q. Even if you could make a prediction, your
11 profession wouldn't allow you to do it?

12 A. That's right.

13 Q. I guess that's part of the oath you all
14 take --

15 A. That's right.

16 Q. -- or commitment to your science?

17 A. We have to be responsible in what we say.

18 Q. I understand. But you're not saying that
19 a jury can't make that determination, are you?

20 A. Well, the law gives the jury the right to
21 make that determination.

22 Q. So what I'm saying, you're not saying
23 this jury can't make that determination, are you?

24 A. No, I'm saying they have the legal
25 responsibility to try.

1 Q. Okay.

2 A. I'm just saying that the truth is that
3 it's not really possible scientifically to do
4 that.

5 Q. And scientific -- any way scientifically
6 to prove it up, then not one person based on your
7 testimony coming through any court would ever hear
8 that prediction from you; isn't that correct?

9 A. That's right.

10 Q. A person could go out and kill and kill
11 and kill again and you would never come in and
12 make that prediction, correct?

13 A. That's right, I probably couldn't.

14 Q. Right, I understand. You couldn't find
15 anywhere in the defendant's evaluation that he
16 thought about himself, how he would be looked upon
17 by others if he engaged in an offense? Couldn't
18 find something there that would temper him and
19 stop him from engaging in the offense?

20 A. No, I found lots that should have stopped
21 him.

22 Q. I agree should have, but you didn't find
23 anything that prevented him from doing it,
24 correct?

25 A. Well, if you assume he did it, no,

1 nothing prevented it. Whatever went on didn't
2 prevent him from doing it, no.

3 Q. That's not an assumption, Doctor, at this
4 time. That's a fact.

5 A. Right. Well, again --

6 Q. The jury has found him guilty.

7 A. That's the position I have to take. I'm
8 sorry.

9 MR. VINSON: I appreciate your testimony,
10 Doctor. I have no further questions.

11 THE COURT: Thank you, Mr. Vinson. Mr.
12 Odom.

13
14 REDIRECT EXAMINATION

15 BY MR. ODOM:

16 Q. Dr. Brown, your profession precludes you
17 from attempting to scientifically make the
18 prediction of whether or not a person would be a
19 future danger to society, correct?

20 A. It does, yes.

21 Q. All right. Mr. Vinson asked you a number
22 of questions in regards to that. But regardless
23 of that, the people that you do see on death row
24 develop patterns that you're able to identify as
25 antisocial type behavior patterns?

1 A. Yes, everyone that I can remember, I
2 could see why they were there, yes.

3 Q. And those patterns were not present in
4 Mr. Dennes?

5 A. They were not.

6 Q. Now, Mr. Vinson asked you a number of
7 questions as to whether or not Mr. Dennes did or
8 didn't take the tests. Do you have any reason to
9 believe that he didn't take those 9, 12 hours of
10 tests that he was given?

11 A. No, no, I don't have any reason to
12 believe that. He signed some of the tests. It's
13 his signature. I don't know -- he's isolated --
14 well, I think he's isolated to some extent in the
15 jail.

16 Q. Is there a consistency as far as the
17 taking of the tests in regards to one person
18 having taken the tests?

19 A. Well, that's one of the things the test
20 is built to measure is whether or not there is
21 consistency in the answers across time. And for
22 example, if several people take it, it would be
23 obvious. And if one person other than Mr. Dennes
24 took it, then I don't know who you might select in
25 the jail who you would think would be a better

1 person than he would. So I just don't have any
2 reason to believe that would be sensible.

3 Q. Mr. Vinson attempted to draw a parallel
4 between these battery, 12 hour tests that you
5 administer and that have been prepared by your
6 profession based upon a tremendous amount of
7 research to taking a Reader's Digest test.

8 A. Well, I have a little trouble with that
9 because there are all kinds of self help tests you
10 read in magazines all the time. Most of those are
11 games, silly things for people to occupy their
12 time. They're not anywhere comparable to what
13 these tests have done in terms of research and
14 background. But some of the tests that you might
15 find in places such as Reader's Digest, for
16 example, how long you will live, those are well
17 researched. But, again, those tests do not have
18 validity scales and lie scales and deception
19 scales built in to them to counter for any people
20 faking or trying to mislead themselves. If
21 someone wants to take a Reader's Digest test and
22 lie on it and say I'm going to live to be a
23 hundred years old and that's not true at all, I
24 guess they can do that. But I don't see the
25 purpose in that.

1 Q. That answers my next question. The tests
2 that you have have built within them a mechanism
3 to detect the type of fudging that Mr. Vinson was
4 talking about that you can do when you're filling
5 out the little self help tests?

6 A. Yes, they do.

7 Q. Now, when you did your interview -- by
8 the way, were you by yourself when you interviewed
9 Mr. Dennes?

10 A. I think I was accompanied by an intern
11 that day.

12 Q. Was the difference, the contrast in Mr.
13 Dennes's apparent patterns as well as those to the
14 ones you're talking about that are on death row,
15 was that obvious -- is that a very obvious thing?
16 Is it a striking difference that you have here
17 between Mr. Dennes and your typical type person
18 that's on death row?

19 A. Some of them, yes. But a good number of
20 them, no. Some of the people who are on death
21 row, when you first begin talking to them, are
22 very polite and very cordial and friendly and
23 agreeable and cooperative, as Mr. Dennes was. And
24 their true nature is only revealed in later
25 descriptions of their life and their attitudes

1 about people and the way their life emerges over
2 the interview and then in the psychological tests.

3 Q. If Mr. Dennes were attempting to rose
4 color all of his behavior, would he have, for
5 example, on one hand portray himself as being
6 subject to alcohol and drug abuse and on the other
7 hand characterize himself as maintaining stable
8 environments in other areas? Is that
9 characteristic for someone who is trying to lie to
10 you or trying to deceive you into thinking that
11 they are a person that they are not?

12 A. Well, usually when someone is trying to
13 misrepresent themselves and look especially good,
14 they usually stay pretty consistent with that,
15 don't admit any real shortcomings or anything
16 really negative about themselves.

17 Q. Doctor, you're not -- and your testimony,
18 you're just telling it like it is, aren't you?
19 You're not taking a side on this particular issue
20 one way or the other?

21 A. Well, I'm trying not to. There have been
22 times when I've had to tell defense attorneys, for
23 example, who ask me to do this, that I'm afraid I
24 can't offer much that is helpful. Their clients
25 turned out to be people that are perfectly capable

1 of doing the offense they're charged with. And
2 that's what I have to say. So you could only
3 defend the information that you have and the
4 results that you have. Mr. Vinson looked at my
5 file. It's all there for everybody to look at. I
6 can't defend something that's not there.

7 Q. The good and the bad?

8 A. Yes, you have to take the good with the
9 bad. And whatever comes up is the way it ends up.

10 Q. Dr. Brown, are you familiar with the
11 term "abhorrent behavior"?

12 A. Yes.

13 Q. What is abhorrent behavior?

14 A. That's behavior that's not considered
15 normal or typical in the situation. That's a lot
16 of different behaviors.

17 Q. Does your profession recognize an
18 instance wherein someone is capable of doing
19 something that is abhorrent or not normal and that
20 that is or can be a once or a one time event?

21 A. Again, there is always some reason
22 behavior occurs. It just doesn't all of a sudden
23 erupt and then the person is normal again. Even
24 people who do something totally out of character,
25 which happens occasionally, there is a reason for

1 it. And if you have the right kind of history and
2 the right kind of information, you'll know the
3 reason. For example, people -- we see people who
4 get strung out on various kinds of street drugs
5 and they do things that are absolutely
6 incredible. And they would not be expected to do
7 this behavior if they had not been strung out on
8 street drugs like this. But, you know, there are
9 people under various kind of stresses. They
10 perform behaviors or they do something they wish
11 they hadn't done. It was totally new for them.
12 There are like singular events that occur, but
13 even then it's not in a vacuum. There is some way
14 to reasonably explain why this unusual or out of
15 character or abhorrent, as you call it, behavior
16 occurs.

17 MR. ODOM: Pass the witness, Your Honor.

18 THE COURT: Thank you, Mr. Odom. Mr.
19 Vinson.

20
21 RE CROSS EXAMINATION

22 BY MR. VINSON:

23 Q. Doctor, you don't know what we're dealing
24 with here, do you?

25 A. In this case, like I said a while ago,

1 I'm stumped. I don't know what you've got here.

2 Q. You've heard of Dr. Jekyll and Mr. Hyde,
3 have you not?

4 A. Yes, I have.

5 Q. But you don't know if we're dealing with
6 Mr. Hyde or Dr. Jekyll, do you?

7 A. Well, believe me, if I could find a
8 potion that he took to change him into this, I'd
9 feel good about it. But, no, I don't even have
10 that.

11 Q. And you know the result in that case.
12 Okay. But you can't even say that this was it,
13 the type abhorrent behavior. Would you want to be
14 in proximity of this defendant when he had that
15 behavior change again?

16 A. Absolutely not. I would not want to be
17 there, no.

18 Q. You wouldn't want any other innocent
19 person there when he had that change again, would
20 you?

21 A. No.

22 MR. VINSON: I have nothing further, Your
23 Honor.

24 THE COURT: Mr. Odom.
25

1 FURTHER DIRECT EXAMINATION

2 BY MR. ODOM:

3 Q. Although, are there any indicators of
4 flash anger or uncontrollable impulses to commit
5 violence?

6 A. No.

7 Q. Mr. Vinson asked would you want to be
8 there if there is a sudden abhorrent behavior that
9 occurs. You see few instances of where someone --

10 MR. VINSON: Object to the leading, Your
11 Honor.

12 THE COURT: Sustained.

13 Q. (By Mr. Odom) That's not what you see
14 either in your testing or the facts that you've
15 heard about this case?

16 MR. VINSON: Objection, leading.

17 THE COURT: Sustained.

18 Q. (By Mr. Odom) Can you state whether or
19 not a flash type temperament or a sudden burst of
20 uncontrollable abhorrent behavior is what you see
21 in either the facts of this case or your tests of
22 this defendant?

23 A. Yes, I can say something about that.

24 Q. Could you?

25 A. I don't see it. I don't believe it's

1 there.

2 MR. ODOM: Pass the witness.

3 MR. VINSON: I have nothing further, Your
4 Honor.

5 THE COURT: You may step down. We'll
6 place you on call, Doctor.

7 Call your next witness.

8 This witness has to leave today and go
9 back to Austin; is that right? I understand from
10 counsel it's going to be very brief.

11 Five minute break for the jury, please.

12 (Brief recess).

13 (Jury in jury box).

14 THE COURT: Please be seated.

15 (Witness is sworn).

16 THE COURT: Mr. Odom

17
18 RAY DENNES,
19 was called as a witness by the Defense and, having
20 been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ODOM:

23 Q. Would you state your name for the ladies
24 and gentlemen of the jury, please.

25 A. Ray Dennes.

1 Q. And you are the son of Reinaldo Dennes?

2 A. Yes, sir.

3 Q. Are you a junior, or is it --

4 A. No, sir, just Ray Dennes.

5 Q. How old a person are you?

6 A. Twenty-one.

7 Q. And what do you presently do, Ray?

8 A. I'm a full-time student at UT Austin.

9 Q. And what grade are you in at UT?

10 A. I'm in my senior year.

11 Q. And what is it that you are majoring in?

12 A. MSI, management information systems.

13 It's a type of computer degree.

14 Q. Ray, where did you go to high school?

15 A. Mayde Creek in the Katy area.

16 Q. And how is it that you have been able to
17 afford or I guess a better way to put it is have
18 you had any financial assistance in college?

19 A. Yes.

20 Q. Explain that to the jury.

21 A. Well, I have -- actually, my first couple
22 of years I had a scholarship from the school,
23 Texas Achievement award. That was for achievement
24 in my high school grades, scholarship,
25 activities. And this past year I had also a

1 presidential endowed scholarship and that was also
2 for scholastic achievement as well. I have
3 several government grants and a lot of support
4 from mom and dad, also hard work on my part
5 helping myself through school.

6 Q. Ray, other than the obvious rewards that
7 you've gotten as far as academic and financial
8 scholarships that you can see, were you involved
9 in extracurricular activities?

10 A. Now with the amount of work that I do, my
11 extracurriculars have substantially decreased.
12 I'm putting in 12 hours during the week at school
13 and around about 40 hours at a part-time job the
14 rest of the week.

15 Q. All right. What prior to your full-time
16 delving into your academics, what type of
17 extracurriculars have you been involved in?

18 A. I've been in just about every sport.
19 I've done tae kwon do. I did that for a long time
20 on my own during school. A lot of weight lifting,
21 basketball. I've played some volleyball and
22 several organizations.

23 Q. Have you been involved in any politics?

24 A. Well, not too much politics. I do work
25 at a political organization.

1 Q. Ray, you don't know anything about the
2 facts of this case, do you?

3 A. No, sir. I was booted out the first day.

4 Q. Well, other than that, you're not aware,
5 you don't have any personal knowledge of anything
6 that's gone on in this case?

7 A. No, sir.

8 Q. When did your folks get divorced?

9 A. It's been several years now. The exact
10 time I don't know. More than-- I'd say more than
11 about four or five years ago at least.

12 Q. Has your father always been supportive of
13 you?

14 A. Yes, sir.

15 Q. Has your father encouraged you to attempt
16 to achieve certain goals?

17 A. Yes.

18 Q. You understand that after last week your
19 father is facing --

20 MR. SMYTH: I object to leading, Judge.

21 THE COURT: I'll allow it for expediency
22 purposes.

23 MR. ODOM: I'm trying to hurry us along.

24 MR. SMYTH: I'm going to object to the
25 side bar.

1 MR. ODOM: Excuse me. I apologize.

2 Q. (By Mr. Odom) You understand the two
3 options your dad is facing?

4 A. Yes, sir.

5 Q. Regardless of what your father may or may
6 not have done, will you still view him as an
7 influence in your life?

8 A. Absolutely.

9 Q. Regardless of what your father may or may
10 not have done, would you still to some extent if
11 he's around rely upon him as far as certain forms
12 of advice and guidance in your life?

13 A. Of course.

14 MR. ODOM: Pass the witness.

15 MR. SMYTH: No questions, Your Honor.
16 Thank you.

17 THE COURT: You may step down, Mr.
18 Dennes. Thank you for your testimony.

19 All right, ladies and gentlemen of the
20 jury, it's 5:20. I don't think we're going to get
21 to deliberate today. I don't think you'd want to
22 start at this late hour anyway.

23 My understanding from Mr. Odom, they have
24 one more witness. So we're going to recess at
25 this time until 9:45 in the morning.

1 Please be downstairs. Remember your
2 admonishments. I feel certain that we'll get to
3 deliberate tomorrow. Make the necessary
4 preparations because, as I told you, once
5 deliberations commence, you're not going home
6 until you reach a verdict. So again, as far as
7 personal items, toiletries, medicines, anything of
8 that nature, bring that with you.

9 We stand in recess until 9:45. Thank
10 you.

11 (Evening recess).
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1 STATE OF TEXAS
2 COUNTY OF HARRIS
3

4 I, Kaye G. Jameson, Deputy
5 Official Court Reporter of said Court, hereby
6 certify that the foregoing pages comprise a true
7 and correct transcription of all portions of
8 evidence and other proceedings requested in
9 writing by counsel for the parties to be included
10 in the reporter's record in the above styled and
11 numbered cause, all of which occurred in open
12 court or in chambers and were reported by me.

13
14 I further certify that this transcription of the
15 proceedings truly and correctly reflects the
16 exhibits, if any, offered by the respective
17 parties.

18
19 WITNESS MY HAND this the 4th day of

20 February, 1998.

21 Kaye G. Jameson

22 Kaye G. Jameson
23 Deputy Official Court Reporter
301 San Jacinto
Houston, Texas 77002
24 281-328-4918
Certificate No. 476
25 Expires December 31, 1998

APPELLATE COURT NO. 72966

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

REINALDO DENNES

Appellant,

VS.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM 263RD DISTRICT COURT OF HARRIS COUNTY,
TEXAS

Judge Jim Wallace, Presiding

CAUSE NO. 750,313

September 3, 1997

Reporter's Record

Volume 35 of 39 Volumes

Sharon Kay Cook
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED IN
COURT OF CRIMINAL APPEALS

FEB 25 1998

Troy C. Bennett, Jr., Clerk

22957

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

IN RE: [illegible]

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Volume 35

PUnishment

September 3, 1997

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1 CAUSE NO. 750,313
2 STATE OF TEXAS IN THE 263RD DISTRICT COURT
3 VS. OF
4 REINALDO DENNES HARRIS COUNTY, T E X A S

5 A P P E A R A N C E S:

6 For the State: Mr. Mark Vinson
Bar Card No. 2059040
7 Mr. Don Smyth
Bar Card No. 1877700
8 Assistant District Attorneys
201 Fannin
9 Houston, Texas 77002
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10 For the Defendant: Mr. Wendell Odom
Bar Card No. 15208506
11 Ms. Yalia Guerrero
Bar Card No.0078862
12 Attorneys at Law
1301 McKinney, Suite 3100
13 Houston, Texas 77010
713-951-9555
14
15

16 BE IT REMEMBERED that upon this the 3rd
17 day of September, A. D. 1997, the above entitled and
18 numbered cause came on for punishment before the
19 Honorable Jim Wallace, Judge of the 263rd District
20 Court of Harris County, Texas; and the State appearing
21 in person and the Defendant appearing in person and by
22 counsel, announced ready for punishment, after a jury
23 having been selected, and all preliminary matters
24 having been disposed of, the following proceedings
25 were had, viz:

1 THE COURT: Let the record reflect the
2 State is present, the defendant is present with his
3 attorney and the jury is not present.

4 We now have a further proposed charge.

5 What says the State?

6 MR. VINSON: Your Honor, we ask that page
7 seven on the extraneous be removed, and we would have
8 no further complaints with the charge.

9 THE COURT: Thank you, Mr. Vinson.

10 What says the defense?

11 MR. ODOM: I would object to any removal
12 of any instruction that would lessen the burden upon
13 the State and the proof of extraneous offenses at the
14 punishment stage of this trial. I rely on the cases
15 of Powell and Howell, which indicate are non-capital
16 cases, and there has to be proof beyond a reasonable
17 doubt and the Supreme Court has indicated in a number
18 of cases that the Eighth Amendment requires a higher
19 standard of reliability in a capital case than it does
20 in a non-capital case.

21 I would submit, although the State has
22 submitted case law from the Court of Criminal Appeals
23 to the effect that is permissible, I would argue to
24 the Court that there is some dicta that says there can
25 be certain circumstances that may require an

1 instruction as to the reliability of extraneous
2 evidence, depending on the nature of that extraneous
3 offense evidence. The extraneous evidence that the
4 State has is uncorroborated, is based upon an
5 absolute, absolute plea of immunity based upon what
6 the testimony is and runs contrary to an Eighth
7 Amendment requirement of a greater degree of
8 reliability in a capital case than a non-capital case.
9 As such, we would argue strenuously for an instruction
10 to be presented by the Court. And I would ask that
11 instruction be submitted in the record along with
12 everything else, if the Court chooses not to put it
13 in, or a similar instruction regarding reasonable
14 doubt on the extraneous offenses be submitted on this
15 particular case.

16 THE COURT: Let me think about it for a
17 second.

18 Any other comments regarding the proposed
19 charge at this time?

20 MR. ODOM: None other than those I
21 expressed yesterday, Judge.

22 THE COURT: Very well. We are going to
23 remove page seven of the charge dealing with the
24 matter of instruction regarding extraneous, and I will
25 allow that to go up as part of the appellate record,

1 that particular page. And it's up to the attorneys to
2 make sure that is included in the record. Mark it as
3 Court's 1 for exhibit.

4 Bring out the jury, please.

5 (Jury came into the courtroom.)

6 THE COURT: Thank you. Please be seated.

7 Good morning, ladies and gentlemen, thank
8 you for being with us this morning. I hope this
9 morning we will have an opportunity to allow the
10 attorneys to commence arguments. I certainly
11 anticipate. Again, as I told you yesterday, I
12 anticipate that we will be in a position to hand the
13 case to you for your deliberations.

14 With that, Mr. Odom, would you please call
15 your next witness.

16 MR. ODOM: I would call Demetria Dennes,
17 please.

18

19

20

21

22

23

24

25

1 DEMETRIA DENNES,
2 was called as a witness by the defense and, having
3 been duly sworn, through an interpreter testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. ODOM:

7 Q Would you please state your name for the
8 jury.

9 A Demetria Dennes.

10 Q And Mrs. Dennes, how are you related to
11 Reinaldo Dennes?

12 A I am his mother.

13 Q Mrs. Dennes, where was Reinaldo Dennes
14 born?

15 A In Cuba.

16 Q And where were you born?

17 A In Cuba.

18 Q And when was it that you came to the
19 United States?

20 A In 1961.

21 Q And who did you come to the United States
22 with?

23 A With my two sons, with Alberto and
24 Reinaldo, and the little girl was born here.

25 Q And you also came -- did you come with

1 your husband at that time or did he came later?

2 A The four of us came.

3 Q And your husband is the gentlemen sitting
4 here on the front row?

5 A Where is he? Oh, yes.

6 Q After you were here, you had a daughter as
7 well?

8 A Yes.

9 Q What's her name?

10 A Barbara Dennes.

11 Q Mrs. Dennes, did Ray grow up in the
12 Florida area or did he grow up in another area?

13 A In New Jersey.

14 Q And what age did Ray leave the house, go
15 out on his own?

16 A From my home?

17 Q Yes, sir.

18 A When he was 18 years old, when he got
19 married.

20 Q And previously the jury has seen from
21 Daisy Dennes --

22 THE INTERPRETER: I'm sorry.

23 Q Previously the jury heard from a Daisy
24 Dennes?

25 A Yes, that's his wife. It's his wife.

1 Q Now, Mrs. Dennes, I know that you are
2 nervous and that this is difficult but you need to
3 speak up and David is not talking here. You are
4 talking.

5 When he left the house at 18 and he was
6 married at that time --

7 A Yes.

8 Q -- did he start working on his own?

9 A He finished school and he started working.

10 Q What school -- how far did he go in
11 school?

12 A High school.

13 Q Did he ever go to college?

14 A No.

15 Q And what did he start doing jobwise?

16 A The vocation of his father, jeweler.

17 Q Mrs. Dennes, at what point did Ray Dennes
18 and Daisy move to Houston?

19 A We lived in New Jersey. All of us moved
20 to Houston because he began working in Houston.

21 Q And at that time had you moved to Florida
22 yet or were you still in New Jersey?

23 A When I left Cuba, the only place I lived
24 was in New Jersey and Houston.

25 Q How many children did Ray and Daisy have?

1 A Two.

2 Q And we have seen Ray Dennes, his son. How
3 old is his daughter and what is her name?

4 A My daughter Barbara?

5 Q No, no, Ray's daughter.

6 A 12 years old.

7 Q And what is her name?

8 A Desirre.

9 Q Mrs. Dennes, have you remained close to
10 Ray and his family?

11 A Oh, yes.

12 Q When did you move to Florida?

13 A Three years ago.

14 Q When was it that Ray remarried?

15 A It's been exactly four years.

16 Q And does he have a child from that
17 marriage?

18 A Yes.

19 Q How old is that child?

20 A Ten months, nine months.

21 Q Pardon?

22 A Nine months or ten months. It will be a
23 year in October.

24 Q What is his present wife's name?

25 A Louisa.

1 Q What is the name of his youngest son?

2 A Christen.

3 Q Was Christen born while Ray has been in
4 custody?

5 A Yes.

6 Q Mrs. Dennes, did I ask you to provide me
7 and to go over certain photographs?

8 A Yes.

9 Q And you provided those to me, did you not?

10 A Correct.

11 MR. ODOM: May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 Q Mrs. Dennes, I would like to ask you to
15 look at Defendant's Exhibit 2, 3, and 4, and without
16 telling me what they are, tell me if you can recognize
17 them.

18 A I took -- I have to have my glasses in my
19 purse.

20 Q Can you identify those?

21 A Yes.

22 Q And are they true pictures of what they
23 represent?

24 A Yes.

25 MR. ODOM: May I approach the witness,

1 Judge? .

2 THE COURT: You may.

3 MR. ODOM: I tender Defendant's Exhibit
4 2, 3 and 4 to State's counsel.

5 MR. SMYTH: State has no objection, Your
6 Honor.

7 THE COURT: Defendant's Exhibit 2, 3 and 4
8 are admitted.

9 Q Mrs. Dennes, looking at Defendant's
10 Exhibit 2, punishment number 2, what is the front page
11 of that album? What does it show?

12 A Where my son belonged to the karate school
13 and the grandson, also.

14 Q And that's a photograph of his class?

15 A Yes.

16 Q And on the back side, what is on that
17 exhibit?

18 A Well, here they are practicing with his
19 oldest son. Here is my son. And that's his home,
20 practicing with the little boy in the living room.

21 Q To your knowledge, was Reinaldo active
22 with his son in sports --

23 A Very, yes.

24 Q -- other than the karate that he and his
25 son attended?

1 A They went to the one where you hit it with
2 your foot, the ball, the baseball, to the park. He
3 would take him a lot to the park.

4 Q Looking at exhibit 3 now, what does the
5 front page of that photo album represent?

6 A Well, in the first one he is holding the
7 little girl. And here he had the boy dressed up where
8 they get the carmel candies on Halloween. And the
9 second one, the family is at the beach.

10 Q Is that in Florida or in Texas?

11 A This is in Texas, here.

12 And the third one is his daughter's
13 birthday. They always celebrated it.

14 Q What's on the back side of that?

15 A And the first one is in the park where he
16 took the little boy like on a picnic. The second one
17 they are cutting a cake at a birthday party for the
18 boy. And the third one is the hospital where the
19 little girl was born.

20 Q Please look at Defendant' Exhibit 4. What
21 does that photo represent?

22 A Here they are among friends and the little
23 boy. Here's another time at the park, the second one.
24 The third one he goes there at the house with the
25 nephew, with Daisy's nephew. They are together, with

1 a view towards the sea, with the little boy and the
2 little girl. He always went to many places with the
3 children.

4 Q What's on the back sides?

5 A Here we are all at the church with the
6 little boy on his first communion. And here we are in
7 a place where there is animals, like a zoo, with the
8 little boy. Here he is in the sand with the little
9 boy, making something in the sand. Here we are at
10 home, eating.

11 Q Mrs. Dennes, did you have a whole book of
12 photo albums you gave me?

13 A Yes.

14 Q And I just selected those three pages?

15 A (Witness nods head.)

16 Q You need to say something.

17 A Yes.

18 MR. ODOM: I would ask that the exhibits
19 be published to the jury.

20 THE COURT: Very well.

21 MR. ODOM: May I hand them to them?

22 THE COURT: Sure.

23 Q Mrs. Dennes, you don't know anything about
24 the facts in this case, do you?

25 A No.

1 Q You have not been here during the trial?

2 A At Daisy's house.

3 Q But you've been out in the hallway?

4 A Oh, yes, totally.

5 Q Every day you have not been in the
6 courtroom?

7 A No.

8 Q So the only thing you know about the facts
9 is what I have told you?

10 A Yes.

11 Q You do know --

12 MR. SMYTH: Object to the leading.

13 Q Do you know what type of father Ray has
14 been?

15 A The best.

16 Q Why do you say that?

17 A Because he has always given the children
18 everything they needed, love, protection, education,
19 and the oldest one is studying at the university now.
20 And the little girl has always been in the piano and
21 dance classes. He's been the best father.

22 Q Do his children love him.

23 MR. SMYTH: Object, she can't testify for
24 his kids.

25 MR. ODOM: If she knows.

1 MR. SMYTH: Pure speculation on her part.

2 MR. ODOM: Not from the grandmother.

3 THE COURT: Sustain the objection.

4 MR. SMYTH: Object to the side bar.

5 THE COURT: Let's not veer off to those
6 roads.

7 Q (Mr. Odom) Do his children to your
8 knowledge show affection towards him?

9 A Much.

10 Q Do you know if Ray has, in what you have
11 seen, attempted to set a good example for the
12 children?

13 A Yes.

14 Q Mrs. Dennes, you know he has been found
15 guilty of capital murder?

16 A I have heard it here.

17 Q And do you love your son?

18 A I think my son is telling the truth.

19 Q Regardless of what happens, you are Ray
20 Dennes's mother?

21 A Yes.

22 Q But even as his mother, are you able to
23 see what type of family man he is?

24 A Yes.

25 Q And what type of family man is he?

1 A The best.

2 Q Mrs. Dennes, I have asked you what type of
3 father Ray has been. What type of son has Ray been to
4 you and your husband?

5 A First he has been a very loving son, very
6 attentive to our needs, to us. We have always been
7 able to count on him at all times. We have always had
8 his help and now his father -- he has given much love
9 to his children, much attention, protection. And he
10 has given him all his time and has taken him to the
11 park and everything. He has shared the karate with
12 him, the child. The boy child has been very involved
13 in sports.

14 Q Mrs. Dennes, is your family a close
15 family?

16 A Yes.

17 Q Where are all the family members located?
18 Where were they living?

19 A Well, like my mother in New Jersey, a
20 sister, nephews. Here I have Daisy, the son, Alberto,
21 the sons of Alberto and Louisa, the wife of Ray, the
22 first one, my grandson.

23 Q Where is your daughter Barbara? Where
24 does she live?

25 A In Dallas.

1 Q Despite the fact that everybody is spread
2 out, do you still get together and maintain a family
3 unit?

4 A Yes. Barbara has come a lot to be with
5 her brother here.

6 Q How old is your husband?

7 A My husband is 68 years old.

8 Q Mrs. Dennes, what would be the affect of
9 Reinaldo receiving the death penalty to you and your
10 husband.

11 MR. SMYTH: Object, totally irrelevant and
12 has no part in this trial.

13 MR. ODOM: It's mitigating.

14 THE COURT: What was the question?

15 MR. ODOM: What would be the affect on her
16 and her husband of Ray receiving the death penalty.

17 THE COURT: Sustained.

18 Q (Mr. Odom) What will the affect of
19 finding Ray being found guilty of murder, what affect
20 will that have on you and your family?

21 A We would feel almost death.

22 MR. ODOM: Pass the witness.

23 THE COURT: Thank you.

24 Mr. Smyth.

25

1

CROSS EXAMINATION

2

BY MR. SMYTH:

3

Q Mrs. Dennes, my name is Don Smyth. And I

4

am the assistant district attorney here in Harris

5

County, Texas.

6

I have never had an opportunity to talk to

7

you, have I, ma'am?

8

A Yes.

9

Q Now, I take it, from your conversation,

10

you and your husband tried to keep a close family; is

11

that correct?

12

A Yes.

13

Q You did everything possible you could to

14

raise Ray properly, did you not?

15

A We gave him a good upbringing.

16

Q You never had any trouble with him at

17

home?

18

A Never.

19

Q Saw that he got a good education?

20

A Yes.

21

Q Provided for his needs?

22

A Everything.

23

Q Instructed him in the responsibilities

24

that he would have as a citizen?

25

A Yes.

1 Q Taught him to obey the law?

2 A Yes.

3 Q Taught him to work hard for a living?

4 A Yes.

5 Q And you taught him it's not right to
6 steal?

7 A Yes.

8 Q It's not right to hurt other people?

9 A Yes.

10 Q And if you wanted something, you should go
11 out and work on it?

12 A Yes, he works.

13 Q And you taught him hard work is what he
14 should do if he wanted something?

15 A Yes.

16 Q You taught him about the evils of drugs --

17 A Yes.

18 Q -- and alcohol?

19 A Yes.

20 Q You taught him that he should be faithful
21 to his wife?

22 A Yes.

23 Q He should respect his wife?

24 A Yes.

25 Q So you did everything you could do to make

1 sure that he became a productive citizen, did you not,
2 ma'am?

3 A Yes.

4 Q It's not your fault that Mr. Dennes, the
5 defendant, is in the jam he is in today, is it?

6 A Correct.

7 Q You didn't have anything to do with what
8 happened on January 24, 1996, did you?

9 A No.

10 Q And if he had come to you, you'd have told
11 him certainly not to do it, wouldn't you?

12 A Correct.

13 Q You were living in Florida, were you not,
14 ma'am?

15 A Yes, I had moved to Florida.

16 Q And shortly after January 24, 1996,
17 probably by January the 25th or the 26th, Ray came to
18 Miami where you lived, did he not?

19 A Yes.

20 Q And with him was his brother, Jose Alberto
21 Dennes?

22 A Yes.

23 Q They drive up in a bright, fancy, white
24 colored sports car, right?

25 A I didn't see the car. No.

1 Q You didn't see the car?

2 A (Witness shakes head.)

3 Q How did they get to your house?

4 A They came in bus or car. I didn't see the
5 car.

6 Q You never saw a bright, shiny sports car
7 at your house?

8 A No.

9 Q Now, Alberto and Ray have come to your
10 house on holiday, right?

11 A Yes.

12 Q Come to visit with you?

13 A Yes.

14 Q And then they left the country and went to
15 Santo Domingo, right?

16 A Yes.

17 Q Both Ray and Alberto went to Santo
18 Domingo?

19 A Yes.

20 Q Did you go with him, you and your husband?

21 A Yes.

22 Q And in addition to Santo Domingo, where
23 else did you go?

24 A No place else.

25 Q Just to Santo Domingo?

1 A Santo Domingo.

2 Q How long did you stay in Santo Domingo?

3 A Four days, three days.

4 Q Do you have any family in Santo Domingo?

5 A No. We went to get acquainted with that
6 place.

7 Q Just for vacation?

8 A Yes.

9 Q Was somebody planning on moving there?

10 A No.

11 Q Just wanted to kind of see what the island
12 of Santo Domingo looked like?

13 A I always wanted to visit Santo Domingo.

14 Q And Ray and Alberto took you there?

15 A And my husband, too.

16 Q And your husband. And then you came back
17 from Santo Domingo, got back into Miami on
18 February 2, 1996?

19 A I don't know exactly the days but four
20 days later we went back to my home.

21 Q Did all four of you come back together?

22 A Yes.

23 Q Okay. You flew back into Miami?

24 A Yes.

25 MR. SMYTH: I have nothing further.

1 Appreciate it.

2 THE COURT: Mr. Odom.

3

4 REDIRECT EXAMINATION

5 BY MR. ODOM:

6 Q Mrs. Dennes, when you went to Santo
7 Domingo, did your children stay with you the whole
8 time?

9 A All the time.

10 Q They didn't slip off and go do any
11 business that you know of, did they?

12 A No. We were all the time at the beach.

13 Q They didn't go off and do a business trip,
14 did they?

15 A No.

16 Q Santo Domingo is that not near your
17 homeland, your original homeland?

18 A No.

19 Q It's on the island of Hispaniola, right?

20 A Yes.

21 Q The prosecutor asked you whether or not
22 you raised Reinaldo the best way you could.

23 A Yes.

24 Q And you said you did.

25 A I raised him with all respect and all love

1 along with his father.

2 Q Even if Ray has committed a horrible
3 crime, even if, does that mean that when you testified
4 about him being a good father --

5 A Uh-huh.

6 Q -- that is not true?

7 A How you ask is it not true?

8 Q I am asking. Even though he may have
9 committed a horrible crime, what kind of father has he
10 been.

11 MR. SMYTH: Your Honor, repetitious. That
12 has been asked and answered twice.

13 THE COURT: Sustained.

14 MR. ODOM: I believe on redirect at this
15 point and I am answering one of the issues he raised
16 on his cross examination.

17 THE COURT: Okay. I'll allow it.

18 A Yes,

19 THE INTERPRETER: She answered the
20 question. The answer was yes.

21 MR. ODOM: Pass the witness.

22 MR. SMYTH: Nothing further.

23 Thank you, ma'am.

24 THE COURT: Mr. Odom, call your next
25 witness.

1 MR. ODOM: That's all we have at this
2 time.

3 THE COURT: What says the State?

4 MR. VINSON: Your Honor, the State will
5 call one rebuttal witness.

6 THE COURT: Very well, call that witness.

7 Can we waive the rule to Mrs. Dennes?

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1 ROYCE SMITHEY,
2 was called as a witness for the State and, having been
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. VINSON:

6 Q Sir, will you give your name and spell
7 your last name for the record.

8 A Royce Smithey, S-m-i-t-h-e-y.

9 Q And how are you employed?

10 A I am chief investigator with the special
11 prosecution unit.

12 Q And how long have you been chief
13 investigator for the special prosecution unit?

14 A I have been with the unit 12 years. I
15 have been the chief investigator for ten years.

16 Q And what is your education, sir?

17 A I have a bachelor of science degree from
18 Sam Houston University in law enforcement, police
19 science. I am a graduate of Law Enforcement
20 Management Institute of Texas. I currently hold a
21 master's certification with the Texas Commission on
22 Law Enforcement Officers Standards and Education,
23 probably have over two thousand hours of specialized
24 training in the field of law enforcement.

25 Q Now, as an investigator with the special

1 prosecution unit, can you give us some background on
2 what you do.

3 A Okay. Our unit was organized in 1984, out
4 of the governor's office, State of Texas. We are a
5 prosecutor assistance program that assists all
6 district attorneys in the State of Texas that have a
7 prison unit within their district. Our function is to
8 investigate and prosecute felony offenses that occur
9 on state property that are related to the Texas
10 Department of Criminal Justice.

11 Q And have you done that on few or many
12 occasions?

13 A Every day, many occasions.

14 Q Now, sir, when a person, that is, becomes
15 an inmate, when he was defendant in the courtroom, but
16 a defendant who has been found guilty of capital
17 murder, receives a life sentence, when he comes into
18 the penitentiary, would he be handled any differently
19 from anyone else that is sent to the penitentiary by
20 virtue of the crime that he committed while he was on
21 the streets?

22 A No, sir, he would not.

23 Q Can you tell the ladies and gentlemen of
24 the jury and His Honor just what would happen to that
25 person.

1 A Once he is convicted and transported by
2 the county in which his conviction came from, he would
3 go through a diagnostic process in the prison system.

4 And basically what they do, they look at
5 each individual that comes through. They look at
6 their education background, their medical background
7 and they look at special needs that individual may
8 have while incarcerated in the prison system, they
9 will look at special training he had.

10 An example would be, say, for instance, is
11 a welder, for example. And what we refer to as a
12 prison set, for example, the free world is outside the
13 prison -- if he was a welder, then the prison system
14 is going to try to assign these inmates to units where
15 they can best utilize their capabilities for
16 rehabilitation.

17 The prison system wants to rehabilitate,
18 if they can. Of course, rehabilitation is solely on
19 that individual whether he wants to be rehabilitated
20 or not. But they want to be able to place them where
21 the State can utilize them to work as well as put them
22 in positions where they can benefit themselves. Such
23 as a welder, they want to put them on an unit where a
24 lot of welding is done and things like that.

25 Each individual that comes in goes through

1 diagnostic, is graded and tested on what that
2 particular individual will do and that determines what
3 unit he was placed on. A person that is convicted of
4 capital murder and receives a life sentence will go
5 through the same process as basically a felony DWI
6 that has been sentenced to a prison system.

7 Q Would he be housed differently, locked
8 down or shackled and chained simply by the offense he
9 committed on the street or the offense that the jury
10 found him guilty of?

11 A No, sir. That's not a determining factor
12 on his incarceration inside the prison system. Let me
13 rephrase that. That's not the sole determination.
14 The fact that he is convicted of a violent offense
15 certainly will go into effect when he goes through
16 diagnostic but eventually, once he gets into the
17 system, the classification process, the housing
18 process of an individual or inmate is solely
19 determined by how he acts while he is in the prison
20 system and does not reflect what he has been convicted
21 of.

22 Q So, in essence, he could eventually be
23 housed with somebody who has been convicted for DWI?

24 A Yes, sir. That's correct.

25 Q Or somebody who just convicted for theft?

1 A Yes, sir.

2 Q And the jury found him guilty of capital
3 murder?

4 A Yes, sir.

5 Q Now, you was also speaking of work. Do
6 you have inmates who receive a life sentence who work
7 there in the prison system?

8 A Yes, sir, we do.

9 Q Do you have circumstances where they can
10 work outside the walls of the system --

11 A Yes, sir.

12 Q -- even though a jury found a person
13 guilty of a violent offense and they receive a life
14 sentence?

15 A Yes, sir. That's correct.

16 Q Are they allowed to come in contact with
17 other personnel that work there at the prison center?

18 A Yes. They come in contact with them
19 immediately. There are correctional officers, guards
20 immediately, teachers, medical personnel. These are
21 people -- a lot of people that are actually working in
22 the prison system are not trying to -- the officers,
23 they may be nurses, teachers and depending on an
24 inmate's situation as far as his education, if he
25 wants to continue his education, well, then, he will

1 come in contact every day, just like a child going to
2 school would be in contact with these people every
3 day. They have medical problems, they will be in
4 contact with the medical people every day. You have
5 counselors. You have classification people, and
6 people like that, they will come in contact with just
7 all the time.

8 Q Assuming a person has the financial
9 resources, can they get drugs in the penitentiary?

10 A Yes, sir.

11 Q What about cocaine?

12 A Yes, sir.

13 Q Have you investigated incidents of such?

14 A Yes, sir, I have.

15 Q And how does that happen?

16 A It happens on numerous -- numerous
17 situations. If the individual has the money, once he
18 is in a prison unit, in a matter of short time, he
19 could learn how to get things in. He can learn the
20 people to talk to, to get whatever it is he needs to
21 get in. In my experience, over the last 12 years,
22 just about any narcotic or controlled substance that
23 you could think of, even prescription medicine,
24 inmates have been able to clandestinely get in the
25 prison system and use it. There are criminal

1 organizations within the prison system that utilize
2 their ability to get these type of drugs and even
3 alcohol in the prison system and use it for sale. And
4 this is how they actually make their black market
5 money while they are incarcerated in the prison
6 system. They get it in from the outside trustees, who
7 are trustees that basically work outside the prison
8 perimeter.

9 Q Outside trustees, what are you talking
10 about, the outside trustees?

11 A Once an individual is in the prison
12 system, he obtains a classification status of line
13 class three, line class two, line class one. And I am
14 going from the bottom up. What is at SAT S-A-T,
15 stated the approved trustee three, two, and one. The
16 better his disciplinary, the least trouble he causes.
17 It is more work, he behaves, the higher he goes on the
18 scale.

19 For the individuals that do work and want
20 to do right in the prison system, they can eventually,
21 under some circumstances, obtain a situation where
22 they could actually work outside the perimeter fences
23 of a prison unit, work on tractors, work on the
24 different animal farms that are outside the actual
25 perimeter fences, and these people are trusted. It is

1 a good program. A lot of these people -- they have
2 very few of these people that walk off. These are
3 people, some of them are what considered short time.
4 These aren't a people that are not doing a whole lot
5 of time. It would be to their benefit to keep a good
6 job they have and go ahead and before they are
7 paroled. Trustees have access to the outside.

8 We have cases other individuals have
9 dropped something off on the road side and prearranged
10 to pick it up and taken it back into the penitentiary.
11 Unfortunately, we have guards that have brought drugs
12 and alcohol and even weapons into our prison system.

13 Q You said weapons. What type of weapons
14 are we talking about?

15 A We have had a couple of incidents where
16 zip guns were made either outside or inside the
17 walls. We are not exactly sure where they were made
18 but ammunition was brought into the prison system,
19 either through a guard or a trustees, and was used in
20 the zip guns. Homemade knives, those type of weapons,
21 are predominantly what are used. There are -- we
22 have, on quite few occasions, had bombs that were made
23 and utilized inside the prison system.

24 Our office, my office itself, has received
25 a letter bomb from an inmate that was made in the

1 prison system, mailed through the United States mail
2 to our office and, fortunately, when our secretary
3 opened the letter, it spewed but it didn't blow up.

4 Q Now, you stated some of the short timers
5 don't walk out. Do you have people that go outside
6 the prison system that do walk off?

7 A Yes, sir, we have.

8 Q Do you know about how many prisoners are
9 you talking about in an unit? Do you have a figure of
10 that?

11 A I think there is approximately 140 inmates
12 in the prison system at this time.

13 Q With that vast number of prisoner inmates
14 in our system, is it possible to monitor a person's
15 conduct 24 hours a day?

16 A There are areas in the prison system where
17 there is very, very close monitoring. These are
18 individuals that are disciplinary problems. They have
19 committed felony offenses since in the federal system.
20 They are supremely dangerous individuals, and they are
21 placed in a segregated-type area within our prison
22 systems but even those individuals, even though you --
23 when you say monitor, you can watch somebody 24 hours
24 a day but that doesn't mean they are not going to do
25 what they want to do. We constantly have guards that

1 are assaulted.

2 One of the problems we have is that the
3 State requires all inmates to shave. If you are going
4 to require them to shave, you have to give them
5 razors. They give disposable razors. Unfortunately
6 these disposable blades and they take razor blades
7 out. We have numerous officers who have been cut on
8 the face and wrists and arms, seriously injured. And
9 these are by individuals that are probably the most
10 closely watched inmates within our system has still
11 been able to manipulate a weapon of some sort and
12 injure an officer, injure an employee and certainly
13 injure other inmates.

14 Q Assuming that, again, money is not an
15 object. You have the financial resources. Are there
16 inmates available to do the bidding of other inmates
17 that have that money?

18 A Yes, sir, certainly.

19 Q Now, you were talking about, I think you
20 said, segregation and what?

21 A Yes, sir. There is an area that is
22 considered administrative segregation.

23 Q What is administrative segregation?

24 A It is for inmates of the low security
25 level. These for inmates that are extremely violent.

1 They are either inmate- or staff-assaulted. They have
2 refused to work. They are a disciplinary problem.
3 They don't abide by the rules. They won't do what
4 they are suppose to do and completely are locked up in
5 the administrative segregation or in our higher
6 security areas within the prison system.

7 Q How available is that type of security?

8 A That security is closer watched than the
9 general population area simply because the nature of
10 the situation. You are talking about people here that
11 have continued to be security threats, either they are
12 an escape risk or they are assaulted and you house
13 these people different. They are placed -- they are
14 segregated away from the general population.

15 They are fed in their cells in most of our
16 units but they still have to bring them out to
17 recreate (sic) each day. If they have visitors, they
18 have to bring them out to visit. If they have medical
19 problems, they bring them out for medical attention,
20 so even though you could take the worse of the worse
21 inmate that the prison system has, someone who is
22 extremely dangerous, that has hurt many people, and he
23 still is going to come in contact with human beings,
24 at least on a daily situation, simply because, maybe
25 unfortunately for our society today, we don't take

1 individuals and throw them in a room and lock them up
2 24 hours a day with no contact. We just don't do
3 that. We still feed them and we still give them
4 medical attention. And because of that, they still
5 come in contact with people daily.

6 Q How is a person housed on death row?

7 A Death row has different sections. This is
8 what is considered --

9 MR. ODOM: Object to how people are housed
10 on death row in that it is irrelevant in the issue.

11 MR. VINSON: I think it is relevant for
12 the jury.

13 MR. ODOM: May we approach the bench on
14 this?

15 THE COURT: I sustain the objection.

16 Q (Mr. Vinson) Now, I think you already
17 testified that you had this segregation?

18 A Yes, sir.

19 Q Now, I guess my question is: The person
20 can, an inmate, still can commit an offense, can he
21 not? And do you have -- what is the circumstances to
22 get them in to admin segregation, if you already have
23 people in there?

24 A Well --

25 Q I mean, do you have infinite space in the

1 admin segregation?

2 A No, you don't. Unfortunately we have
3 quite a few people in the administrative segregation
4 system now. Basically, when the inmate comes in -- a
5 person who receives a sentence less than death -- when
6 he comes in, they are all treated basically the same.
7 Everybody goes through the same process as diagnostic,
8 whatever.

9 Once they are assigned to the units, then
10 these individuals have jobs. They have things they
11 have to do. The better they do the better jobs, they
12 can eventually get. It is just kind of like the same
13 thing in the free world. You work hard, you get
14 promotions.

15 But then once they have become a security
16 threat, that's when they are placed in the
17 administration segregation. They have to do something
18 in order to be placed in that custody level. Once
19 they are in that custody level, they have to maintain
20 a good disciplinary history. Subsequently they could
21 get out of that and work their way back up, depending
22 on the seriousness of the offense that they committed
23 to get there. If they committed a felony assault on a
24 correctional officer, chances they could stay in the
25 admin segregation for two or three years before they

1 actually get out.

2 We have inmates that we have prosecuted
3 for assaulting guards, give them a substantial amount
4 of years added on to the time they are doing. They
5 are placed in the admin segregation. And they
6 eventually got out of the admin segregation and they
7 assaulted guard and prosecuted them and stacked
8 additional time and placed them back in the admin
9 segregation. If they maintain a good disciplinary
10 history and change their attitude and change their way
11 in the prison system, that individual can work his way
12 back out. It may take five or six years but
13 eventually he could do it.

14 Q But, eventually, when you are housed with
15 other criminals, there is always the opportunity to
16 engage in criminal offenses; is that a correct
17 statement?

18 A Yes. That society is one hundred percent
19 criminal element. They feed off of each other.

20 Q Sir, would it also be a fair statement to
21 say in a confined area of the penitentiary you have
22 had criminal acts of violence committed?

23 A Yes, sir. In the most secure areas of our
24 prison system, we have criminal activity, violent
25 criminal activity.

1 MR. VINSON: I have nothing further.

2 THE COURT: Mr. Odom.

3

4 CROSS EXAMINATION

5 BY MR. ODOM:

6 Q My name is Wendell Odom. We have never
7 met?

8 A I think we have somewhere down the line.
9 The name is awfully familiar.

10 Q I would like to ask you some questions as
11 well.

12 A Okay, sir.

13 Q Your job is to assist the prosecutors who
14 are on a grant from the governor, I take it?

15 A Yes, sir.

16 Q And you primarily assist the prosecutors
17 in the area of activities regarding prison units,
18 right?

19 A Yes, sir.

20 Q And you have been asked by the State to
21 come down and assist them and talk to us about the
22 prison units, right?

23 A Yes, sir.

24 Q You made several statements about, when
25 someone goes into a prison system, that they go in and

1 they are treated the same way as everybody else that
2 goes into the prison system, correct?

3 A Yes, sir.

4 Q That is, that diagnostic makes an
5 evaluation as to each and every prisoner, right?

6 A That's correct. Correct.

7 Q And who runs diagnostic?

8 A Are you talking about the warden on that
9 unit or in general?

10 Q In general, who is running the unit or who
11 is making those decisions?

12 A The prison system.

13 Q It's not the prisoners that are deciding
14 where you are going to go in diagnostic?

15 A No, sir.

16 Q It's the guards. Actually it's the
17 officials that are hired by the department -- well, we
18 don't call it that any more. What do we call it now?

19 A Texas Department of Criminal Justice
20 Institutional Division.

21 Q Those employees are the ones that decide,
22 based upon the information they receive, where a
23 person goes in a particular prison unit?

24 A Yes, sir. That's correct.

25 Q And there are factors other than what a

1 person's skills are that make that determination,
2 correct?

3 A That's correct.

4 Q If, for example, someone has been
5 incarcerated for quite a while with the county, they
6 are going to look at his record at the county before
7 they just summarily decide that he's no threat to
8 himself or any other prisoners, aren't they?

9 A They will take that information into
10 consideration, if they have that information, not at
11 all times do they have the information.

12 Q Some counties don't always send that
13 information, do they?

14 A That's correct.

15 Q Especially the rural counties and the
16 smaller counties?

17 A That's correct.

18 Q Now, the offense that a person has
19 committed, in diagnostic, they certainly take that
20 into account, don't they, when they are making their
21 decisions?

22 A Yes, sir, they do.

23 Q It's not like they take the DWI people and
24 the murderers and randomly, hey, you guys go out there
25 in that unit?

1 A No, sir. They screen them very well.

2 Q When you say they are all treated the
3 same, that is what you said, they are screened very
4 well, are they not?

5 A That's correct.

6 Q Isn't it a true statement that very often
7 someone who has been convicted of the offense of
8 murder can be one of your best prisoners?

9 A I believe that's a fair statement to say
10 that.

11 Q You can't say this class is all bad and
12 this class is all good but very often a murderer will
13 be a good prisoner; isn't that true?

14 A Yes, sir. That's true. But there's such
15 a wide range of murder.

16 Q Exactly. There are all types of crimes?

17 A Yes, sir.

18 Q And all kinds of people, right?

19 A Yes, sir.

20 Q And that's part of what the function of
21 the prison unit does when it screens someone in and
22 even, then, while you are in the prison unit, how to
23 treat that person and where that person is going to
24 go, right?

25 A The screening process may determine his

1 initial assignment.

2 Q Right.

3 A The way he acts, the way he conducts
4 himself, the way he continues to work is going to
5 basically dictate what he does from that point on.

6 Q Exactly. It's an ongoing process, is it
7 not?

8 A Yes.

9 Q It's a continuing process?

10 A Yes, sir.

11 Q And the system, our prison systems -- and
12 I assume most prison systems, although I'm not
13 familiar with other systems -- is based on a system of
14 rewards and punishments, is it not?

15 A Yes, sir.

16 Q And if you mess up, you get punished. If
17 you don't mess up, if you do right, you don't get
18 punished and you can be rewarded?

19 A That's correct. It appears it's kind of
20 handled like your children.

21 Q Right, exactly.

22 A You know, your children behave, they are
23 rewarded. If they don't behave, they are punished.

24 Q Mr. Vinson asked you a number of questions
25 about administrative segregation. I have been to the

1 Ellis II Unit down in Rosenberg, one of the Ellises,
2 not near Rosenberg, Rosharon.

3 A No. The Ellis units are in Walker County
4 at Huntsville.

5 Q Is it the Ramsey?

6 A Ramsey.

7 Q One of the Ramsey II or Ramsey I is an
8 administrative segregated unit?

9 A Now, let me explain something here, if I
10 can. When we talk about the administrative
11 segregation, we are talking about an area within the
12 prison system, within a unit, not the whole unit
13 itself.

14 Q Then, I am starting off too narrow. Let
15 me get bigger. There are prisons in our system that
16 have different personalities based on the level of
17 what the prison system decides as to whether a person,
18 based upon a number of factors, should go to a higher
19 security unit or a lower security unit; is that a fair
20 statement?

21 A Yes, sir.

22 Q We have got some units out there that are
23 almost, for lack of a better term, the prison for
24 prison units. And you have got other units out there
25 that are geared, in some instances, for less violent

1 or less dangerous type of offenders?

2 A That's partially correct.

3 Q We also have a bunch in between, don't we?

4 A Yes, sir. You can take -- actually within
5 the prison system, they consider only two types of
6 units: maximum security units and medium security
7 units. There are no minimal security units. The
8 maximum security units, though, this is in referring
9 to your administrative segregation like we were
10 talking about, there is an administrative segregation
11 on unit A but there are also every other
12 classification of inmate on there. You will have the
13 most highest from the State trustee four to the lowest
14 line class one inmate that will be housed on that
15 unit. The whole unit itself is not an administrative,
16 only a portion is the administrative segregation.

17 Q What we are talking about a wing, for
18 example?

19 A Yes, sir.

20 Q On that wing, I saw actually shields that
21 kind of rolled along that can shield from actual --

22 A If you are referring to Ramsey I, Ramsey I
23 is a predominant protective custody unit now. There
24 are inmates that are in that unit, if I am following
25 you with what you are talking about, the area that you

1 would have viewed on Ramsey, it could have the
2 protective custody where these are inmates that have
3 testified in court against other inmates or they have
4 testified against gang members and those shields are
5 protection for the inmates that are walking in the
6 hallway as well as those in the cell.

7 Q Actually this was a number of years ago,
8 and those shields were to make sure that in those
9 situations where you were talking about where you had
10 someone so violent that the guards would be shielded
11 from the person as they went by. They may have
12 changed that in the last few years?

13 A The shields were -- the policy that the
14 prison system set up on the rolling shields were to
15 protect the inmate because the officers walked in
16 front of the shield and behind the shield and the
17 inmates was in the middle. That's what it was
18 designed for.

19 Q There are wings and there are units that
20 are designated for people who have shown, either at
21 the screening or while they have been in the unit, or
22 all of the above, that they just cannot function in a
23 prison society without being segregated and isolated,
24 correct?

25 A Yes, sir.

1 Q And you are not trying to tell the jury,
2 if someone reaches that level, because of space, that
3 the prison unit isn't going to segregate them?

4 A No, no.

5 Q Trustees, someone doesn't automatically
6 become a trustee, do they?

7 A They have to earn the position.

8 Q And trustees are someone -- well, you made
9 a statement that someone that rates of trustees
10 escaping or walking off is a real small rate, isn't
11 it?

12 A You have different levels of trustees.

13 Q That's fair enough. Trustee can be anyone
14 from someone handing the trays in the cafeteria to
15 someone that is in the field, outside the gates?

16 A Yes, sir, depending on what level of
17 trustee they are.

18 Q But someone doesn't automatically become a
19 trustee, they earn the status of becoming a trustee?

20 A That is correct.

21 Q Now, is everybody in our prison units
22 doing cocaine?

23 A I hope not.

24 Q I do, too.

25 You are not trying to tell us that

1 everybody there has access and that everybody is doing
2 drugs, are you?

3 A What I am saying is that if you want
4 cocaine and you are in a prison system, you can get
5 it.

6 Q If you got enough money and you work at it
7 hard enough in the prison system, just like any other
8 system, you can get cocaine?

9 A Sure.

10 Q What happens when a person is discovered
11 to have drugs in a prison system.

12 THE COURT: Let's approach.

13 (Whereupon, the following proceedings were
14 held before the Bench.)

15 THE COURT: We are getting way off base.
16 This case has nothing to do with anything with the
17 elements of. I want this to wrap up quickly. You
18 have pertinent questions and Mr. Vinson asked about
19 something pertinent but this is way off base and I'm
20 not going to allow questions that I believe are not
21 relevant to an issue that this gentlemen is here to
22 speak about.

23 MR. ODOM: If I may, that's in direct
24 response to the questions that Mr. Vinson asked about
25 drugs in the unit.

1 THE COURT: What was the question that you
2 just asked?

3 MR. ODOM: What happens to a person who is
4 caught in prison with drugs.

5 THE COURT: What does that have to do with
6 the time of death?

7 MR. ODOM: It has a lot to do with
8 response.

9 THE COURT: He asked a relevant. You
10 didn't object.

11 MR. ODOM: Judge, if it's in the evidence,
12 I have a right to rebut.

13 THE COURT: I'm not going to allow any
14 further questions that I find to be not pertinent to
15 this matter. That's all I got to say. That's it.

16 (Whereupon, the following proceedings were
17 held before the jury.)

18 MR. ODOM: I'm uncertain as to the Court's
19 ruling as far as whether I can or cannot proceed in
20 this area.

21 THE COURT: I'll give you a couple of
22 questions in that area.

23 MR. ODOM: Okay.

24 Q (Mr. Odom) Mr. Vinson asked you a number
25 of questions about drugs in a prison unit. If a

1 person is caught with drugs in a prison unit, what
2 happens?

3 A Hopefully, we will prosecute them.

4 Q Not only will you prosecute him but he
5 also is facing internal disciplinary rules of the
6 unit, is it not?

7 A That's correct.

8 Q All the rewards we are talking about
9 earlier, or at least a number of them, are taken away,
10 or if not all of them?

11 A Yes, sir.

12 Q And he faces the additional possibility of
13 more time?

14 A Yes, sir. That's correct.

15 Q Now, if a person receives more time on a
16 sentence where he is already doing time, does it run
17 with the sentence or tack on the end?

18 A No. It is stacked on top of what he is
19 currently doing.

20 MR. ODOM: Pass the witness.

21 THE COURT: Any questions?

22 MR. VINSON: I don't have anything
23 further.

24 THE COURT: Thank you very much.

25 MR. VINSON: With that, Your Honor, the

1 State will rest.

2 THE COURT: You may step down and remain
3 in the courtroom.

4 The State rests?

5 MR. VINSON: The State rests.

6 THE COURT: The defense rest as well?

7 MR. ODOM: The defense rests.

8 MR. VINSON: Then the State close.

9 THE COURT: The defense closes?

10 MR. ODOM: Yes, Your Honor.

11 THE COURT: Ladies and gentlemen, you
12 heard all the evidence that is going to be presented
13 to you in the punishment phase of this case. I
14 believe that we have the charge completed. I need to
15 verify that with counsel. If you will go with the
16 bailiff for a few moments, it's my goal to have you
17 right back out to hear arguments and allow you to
18 commence your deliberations. Go with the bailiff for
19 a few minutes. We stand in recess for about five
20 minutes.

21 (Jury left the courtroom.)

22 THE COURT: You may be seated.

23 I am reversing myself and I am going to
24 allow an extraneous charge that was removed previously
25 to be in the charge. And I think all we need to do,

1 if we run off another, and I hope not take too long
2 and go ahead and the copy I read to the jury will
3 insert.

4 MR. SMYTH: Give me a cite you relied on.

5 THE COURT: And I also had your appellate
6 shepardized 802 SW 2d 109 and that states the other
7 charge. And that's 892 SW 2d, 213 at 215.

8 THE COURT: Other than the modification,
9 which I have included in the charge, which I
10 understand the State accepts, is there any other
11 comments about this proposed charge from the State?

12 MR. VINSON: No further comments, Your
13 Honor.

14 THE COURT: Mr. Odom, anything further?

15 MR. ODOM: No, Your Honor.

16 THE COURT: 30 minutes each side and a
17 five minute warning.

18 MR. ODOM: On behalf of Mr. Dennes, I
19 would request for more time on closing arguments. I
20 would submit to the Court we have been in trial for
21 three weeks now. That this is a death case. That the
22 issues here are very important. I don't know that I
23 would use more than 30 minutes time but I would press
24 for additional time.

25 THE COURT: That will be denied. It's

1 been two weeks, two days in the trial.

2 While we have a chance, on the record,
3 something that we were talking about the other day,
4 Mr. Odom had made a previous objection, which I
5 denied, about not having an opportunity to voir dire
6 the panel with regard to extraneous. I want the
7 record to reflect the fact, after the individual voir
8 dires by both sides, we wound up with a panel of 50, I
9 believe, perspective jurors for this case. At that
10 point in time I presented each side with the
11 opportunity to continue a voir dire, a general voir
12 dire, on which they wished to go into. Neither the
13 State nor the defense requested that opportunity.
14 That was at such a time on the 18th, well, after the
15 time that Mr. Odom was aware of the fact that the
16 State intended to offer an extraneous offense. I want
17 the record to reflect.

18 MR. ODOM: On the record, in that regards
19 as well, that date that the Court requested a charge
20 would be a general charge on a general voir dire and
21 as individual voir dire, that was the same day that I
22 requested the Court to rule on one of two motions, one
23 to exclude the extraneous offenses, because I did not
24 have time to be prepared, and I was gave notice of
25 those extraneous two working days prior to that day;

1 and, two, a motion for continuance to allow me to be
2 prepared to investigate those extraneous. At that
3 time I was unaware of the details, as I am essentially
4 at the time they were presented the details of the
5 voir dire. As such, I was not in a position to
6 individually voir dire them like I would have when I
7 relied upon the Court's ruling back on
8 January 23, 1997, nor was I in a position to voir dire
9 generally because I hadn't had time to investigate the
10 issues so I could voir dire in enough detail to be
11 confident in that regards, as well as the fact I had
12 requested the Court to rule one way or another on that
13 matter, which the Court refused to do.

14 THE COURT: Either way the record reflects
15 you had an opportunity to voir dire on that issue.
16 The fact that he did not have voir dire individually,
17 I don't believe is required on the issue of
18 extraneous.

19 All right. Let's bring them out. 30
20 minutes for each side.)

21 (Recess taken.)

22 THE COURT: We are not going to lunch.

23 MR. ODOM: I would like the record to
24 reflect that it is 11:45 and we are being given 30
25 minutes each on the issue of death, and we are not

1 going to lunch. And the jury has been here since, I
2 assume, 9:45, when the Court requested the jury to be
3 here, and at this point I don't know that the jury
4 will be able to pay attention in detail that the
5 Eighth Amendment requires in a capital case to
6 argument, especially in lieu of the fact that it is
7 such a limited argument time, and I would object going
8 forward at this point with the jury either not going
9 to lunch or doing it at this point in time.

10 THE COURT: That will be denied.

11 (Recess taken.)

12 THE COURT: Bring the jury out.

13 MR. ODOM: I would like the record to
14 reflect that it is now 12:10.

15 (Jury came into the courtroom.)

16 THE COURT: Please be seated.

17 Ladies and gentlemen, it is my plan now to
18 read the charge to you, to allow the attorneys then to
19 commence their arguments. I have given each side 30
20 minutes opportunity to do that, which means by the
21 time I read the charge, the attorneys argue, I will
22 probably give you this case to deliberate at
23 approximately 1:15. Can we all stand waiting until
24 1:15.

25 My preference is to proceed in this

1 manner, but if there are some of you that are thinking
2 you are not going to be able to pay suitable attention
3 because you are starving or everything else and you
4 would rather get something to eat and start this
5 process, if a majority wishes. What's your
6 preference, to continue on now or break for lunch and
7 come back?

8 See a show of hands of those that would
9 like to continue now. Is that unanimous?

10 Okay. Thank you very much.

11 I'll read the charge to you. The
12 attorneys will have the same opportunity to argue, as
13 they have done in the past, as they had in the
14 guilt-innocence phase. At that point in time, I will
15 allow you to commence your deliberations with regard
16 to punishment, and I think our bailiff will inform you
17 that we will stay in during the lunch hour and serve
18 you food while you are back there deliberating.

19 (Judge read the charge to the jury.)

20 THE COURT: As you noticed, ladies and
21 gentlemen, I think there is a last page that is
22 repetitious of the previous page. Attached to the
23 charge are the special issues that you must consider.
24 For purpose of clarity, the charge goes on to state,
25 if you answer one yes, you go to two; if you answer

1 two yes and you go to three. And the instructions at
2 the end of the special issue page, after the jury has
3 answered each of the special conditions, the
4 conditions and instructions outlined above, your
5 foreperson will sign the verdict form to be found on
6 the last page of this charge and, of course, at that
7 time you would notify the bailiff.

8 Let me further, in the event that in
9 answering Special Issue Number One or Special Issue
10 Number Two that your answer is no, at that point in
11 time you have no further obligation to go forward and
12 you are to sign the verdict and notify your bailiff.

13 Mr. Smyth, let's proceed.

14 MR. SMYTH: Ladies and gentlemen of the
15 jury, by the clock on the wall it is 25 minutes after
16 12:00.

17 We have been given a brief amount of time
18 to talk to you as in the previous session. I'm going
19 to open for the State and Mr. Vinson is going to close
20 for the State.

21 First of all, I would like to thank you
22 for your verdict that you rendered in the previous
23 part of this trial, the guilt-innocence portion of the
24 trial. It was an absolute correct verdict. Don't let
25 anybody tell you differently or don't let anyone shame

1 you on that verdict. It was absolutely, totally
2 correct based on the evidence in this case.

3 During this case, you had seen that this
4 defendant's rights have been protected to the utmost,
5 to the nth degree. It is now time to protect the
6 rights of society, and that's what your job is here
7 now, to protect the rights of society. We are not
8 here to do what is right for this defendant. We are
9 in here to do what is right for society.

10 The charge is something I would like to
11 talk to you. It's a lot of words here. You heard
12 everything.

13 MR. ODOM: Object, that is beyond the
14 scope of the proper examination. We are not here to
15 protect, to do what is right for the defendant beyond
16 the scope of argumentation.

17 THE COURT: It's overruled.

18 MR. SMYTH: May I have additional time
19 every time I am interrupted?

20 THE COURT: You may.

21 MR. SMYTH: Special Issue Number One, we
22 all talked to you about that and you got the
23 short-hand issue and that's the future dangerousness
24 issue. This is the first issue. And it's the one the
25 State has got the burden. "Do you find beyond a

1 reasonable doubt that there is a probability that the
2 defendant, Reinaldo Dennes, would commit criminal acts
3 of violence that would constitute a threat to
4 society."

5 You have heard the evidence. You think
6 about when you are asked that question. You think
7 about David Copeland. You think about Johnny Szucs.
8 You think about Danny Tsang. You think about
9 Christina Tsang. You think about little nine-year-old
10 christina Tsang. Does that help you answer that
11 question? And what is the answer? Yes, this man is a
12 continuing threat to society.

13 You think about the fact that gun and
14 silencer will never be recovered. You think about the
15 fact that the 3.5 million dollars in diamonds has
16 never been recovered. You think about the fact that
17 he indeed did go to Santo Domingo within six days or
18 came back to the United States six days after this was
19 done. You think about all that stuff. And you think
20 about what Royce Smithey told you. You can do
21 anything you want in prison. Is he a continuing
22 threat to society? You bet he is.

23 Special Issue Number Two, we talked about
24 that. We spent 20 minutes, at least, with you,
25 probably 40 minutes. You heard the inside and upside

1 and downside and you heard the definition. You heard
2 it in respect to the robbery case where the gunman or
3 the get-away driver or the guy holding the bag. "Do
4 you find beyond a reasonable doubt that, Reinaldo
5 Dennes, the defendant himself, actually caused the
6 death of Janos Szucs on the occasion in question, or
7 if he did not cause the death, that he intended to
8 kill Janos Szucs or he anticipated that a human life
9 would be taken."

10 Is there absolutely any doubt in your mind
11 that this defendant intended, at the very least
12 intended, that Janos Szucs die? And he hired somebody
13 to make a silencer and he tested the silencer and he
14 made sure, when you go up to see somebody with a
15 loaded gun, with a silencer, do you intend anything
16 other than to kill them?

17 You know, because of the security
18 precautions, that Johnny Szucs was a dead man the
19 minute that guy right there decided he was going to
20 rob him. He couldn't leave him alive. He knew the
21 defendant. They had worked together on the various
22 jewelry projects. He decided his greed was more
23 important than a man's life. You know the answer to
24 that question is absolutely, unequivocally, undeniably
25 yes. Even if you didn't go to trial, and I submit to

1 you that the evidence is plenty that he pulled the
2 trigger, those two gunshot wounds are fatal through
3 the heart and fatal through the head. And two guys
4 went upstairs. No question about it.

5 Now, we get to the third issue, mitigation
6 issue. Don't let anybody confuse you what this issue
7 is all about. "Do you find from the evidence, taking
8 into consideration all the evidence, including these
9 circumstances of the offense, that the defendant's
10 character and background, and the personal moral
11 culpability of the defendant, Reinaldo Dennes, that
12 there is a sufficient mitigating circumstance or
13 circumstances" -- and whatever might be anybody says
14 that is mitigating for your English, modified
15 circumstance or circumstances, it doesn't apply to
16 anything else.

17 You are looking for the mitigating
18 evidence, if there is any in this case, and you don't
19 have to find if it is not there. You don't have to go
20 if it is there. If it is there, you should know it is
21 there right now. I absolute submit to you there is no
22 mitigating evidence in this case. Absolutely none, no
23 question about it. It's not our burden. It's not a
24 burden on the State to show there is any but there
25 isn't, and you know that.

1 That's about all you need know about the
2 charge is those three issues, yes, yes and no, and
3 this defendant gets exactly what he deserves.

4 You got to learn a lot to lot about the
5 defendant in this case. You got to learn about his
6 couple of marriages and his families and his
7 children. You got to learn that, and I don't know, I
8 have yet to figure out, how he could be so stable and
9 perfect and I don't know where, what a stable family
10 is, but you got a man who, according to Dr. Brown, who
11 abuses alcohol and drugs repeatedly and frequently.
12 You got a man who had a great marriage, admittedly
13 unfaithful to his wife, and you can make that
14 pleural. First wife, over a five-year period of time,
15 and an indecency case where he is caught in the park
16 with his girlfriend, according to her, while he is
17 married to Daisy Dennes but yet he is a great guy,
18 stable.

19 You have got a case where I believe Louisa
20 Dennes, the second wife who has this nine-month old or
21 ten-month child, he is out there and flirting and
22 carrying on with Estrella Martinez but yet he is a
23 great guy. You can't be faithful to anybody or
24 anything.

25 What else do you know about the guy? You

1 know what this guy does. He likes women. He likes
2 cars, a hot car, a car his mother never saw. He liked
3 that car. The interesting thing on his 1989 arrest
4 for indecent exposure, he is arrested in his 1976
5 Chevy red Corvette. The guy likes hot cars and will
6 do anything to get them.

7 You don't get to know much about Johnny
8 Szucs, and I am going to spend what little time to
9 tell you what you do know, what little you have been
10 allowed to learn about Johnny Szucs.

11 MR. ODOM: I object to somehow or another
12 that the defense is not letting the jury to learn
13 about the complaining witness or in any way that it's
14 my fault.

15 THE COURT: Sustained.

16 MR. ODOM: Ask for an instruction to
17 disregard.

18 THE COURT: Jury disregard.

19 MR. ODOM: Ask for a motion for mistrial.

20 THE COURT: Denied.

21 MR. SMYTH: I am going to tell you what
22 little you know about that.

23 All right, you got one photograph of
24 Johnny Szucs, a photograph of Johnny Szucs in life
25 with his wife. Don't forget that photograph. Don't

1 forget that.

2 You have got several photographs
3 unfortunately of Johnny Szucs in death, and don't
4 forget this photograph. This is what this trial is
5 all about. Johnny Szucs was killed for nothing more
6 than greed. And what have you been able to learn
7 about Johnny Szucs? You learned from Sam Salomay that
8 he was a successful and respected business man in the
9 diamond industry. You learned from Nicole Szucs that
10 he was a loving husband and that they tried to do
11 everything together as much as possible.

12 You learned that, during the few days
13 prior to his death, he went on a trip to the Holly
14 Land with the Second Baptist Church, and that he was
15 baptized. You also learned, from looking at these
16 photographs, that Johnny Szucs did not know the time
17 or hour that he would be taken from this earth but he
18 did die with a Bible, a Bible, a Holly Bible close to
19 his feet, close at hand. That ought to tell you
20 something about Johnny Szucs. He wasn't somebody that
21 came to Christ late in life at a late time.

22 You, also, if you look at this photograph,
23 I think you see Johnny Szucs died in peace. Even
24 though he took a bullet through the heart and a bullet
25 through the brain, he died in peace and that's got to

1 be some satisfaction. He doesn't get the credit for
2 that at all and you shouldn't give him the credit for
3 that.

4 Ladies and gentlemen, I don't want you to
5 forget what this case is all about. Don't forget that
6 after David Copeland met this defendant his life has
7 been changed forever. After Johnny Szucs met this
8 defendant his life was changed forever. His wife's,
9 Nicole, life has been changed forever. After Danny
10 Tsang met the defendant, his life has been changed.
11 Defendant's hench man his life has been changed. And
12 even with Christina Tsang, huddled under her covers, a
13 pillow over her head, having never even seen the
14 defendant's hench man, her life has been changed
15 forever.

16 And this is the mitigation evidence. You
17 get a lot of family photos that somehow is suppose to
18 mitigate against the death penalty. You tell me, in
19 good conscience, how in the world those photographs in
20 any way take away from the deeds that this defendant
21 has done. Tell me how they are anything that wasn't
22 his moral culpability for the deed he did in this
23 case.

24 I submit to you, ladies and gentlemen, it
25 does not, and the only proper verdict under this case,

1 the only proper answers are yes, yes and no. Thank
2 you very much.

3 THE COURT: Thank you very much, Mr.
4 Smyth.

5 MR. ODOM: Thank you, Judge.

6 Ladies and gentlemen of the jury, the last
7 time I stood before you I asked you to find the
8 defendant not guilty. But I want you to recall what I
9 said at that time. I didn't say that the defendant
10 was not involved in any bad activity or that he wasn't
11 involved, that he had no culpability. What I said was
12 that the State did a pretty good job of proving that
13 Ray Dennes was involved in stealing the video and the
14 shooting of Mr. Copeland but the State never proved
15 who was up on the seventh floor and whether Ray Dennes
16 was involved in the murder of Janos Szucs to the
17 extent that you could find him guilty. That's what I
18 asked.

19 You looked at the charge and you
20 determined, based upon the evidence in the charge,
21 that my client was involved in the murder on the
22 seventh floor. I can see that, based upon the law of
23 parties, you could determine based upon Mr. Ramirez
24 and Estrella Martinez's evidence that you could find
25 that Mr. Dennes was under the law of parties

1 responsible for what happened up on the seventh floor.
2 I'll accept that verdict. I may disagree with you
3 legally, I may have thought that the charges were
4 improper, but I can accept and understand the verdict
5 based upon what you have seen and what you did.

6 But now we are at the second issue. And
7 we are at the issue of punishment.

8 And I suppose, in my heart of hearts, back
9 when I was talking to each and every one of you, I
10 always knew we were going to be at this point. I knew
11 that. And I think I knew that ultimately I'd have to
12 be looking at you and talking to you about what I want
13 to talk to you about.

14 Mr. Smyth tells you that the only thing
15 this case is about is Janos Szucs. Well, I'm not
16 going to tell you that's certainly not something you
17 should consider but neither the law nor your common
18 sense tells you that's the only thing that this case
19 is all about.

20 The law requires you to focus upon three
21 separate issues, all of which has the underlying
22 thing: Is this the person that we want to execute?
23 And that's really the issue to be dealt with at this
24 point, and I think we all know that, everyone of us
25 knows that. This is an issue of capital punishment

1 and is this the case that capital punishment should be
2 used on.

3 Every one of you expressed various reasons
4 to me and to the Judge and to the prosecutor about
5 your feelings on capital punishment. Every one of you
6 feels that in a certain case it would be appropriate;
7 otherwise you wouldn't be on this jury. We know that.
8 So the question is this that case.

9 And the only issue isn't going to be the
10 rage that Mr. Smyth talked about or the photos of the
11 deceased. The issues are legally and morally and
12 based upon the law and the evidence you have seen is
13 this a capital punishment case for it. No, these
14 photographs aren't the reason not to give the death
15 penalty. You have to have heard Mrs. Dennes testify.
16 And you have to have heard Ray Dennes testify, and you
17 have to put the whole package together to know whether
18 these photographs mean anything or not. Just as, no,
19 these photographs do not constitute death.

20 Remember what we told you when we were
21 talking to you? We have got a system that says if you
22 got murder, even a cold-blooded murder, even a
23 premeditated murder, that does not in and of itself
24 constitute the death penalty. Every one of you talked
25 about that and everyone of you agreed with us that our

1 legislature set up a staircase system.

2 Okay. We have done that. We have reached
3 the cold-blooded murder part. What is this beyond the
4 murder, the capital murder? What is there beyond the
5 capital murder that tells you that we have to put this
6 person to death and that we have to put this person to
7 death because of reasonable doubt on two issues and
8 because of what you, in your heart of hearts, in your
9 soul of souls, believe either mitigates for or
10 mitigates against death. That's where we are now.

11 And the State can retry this murder case
12 over and over again but we all talked about this and
13 we are not retrying the murder case now. Now we are
14 trying Ray Dennes and what is right for Ray Dennes, as
15 well as all these other issues, is the issues that we
16 try right now and that is the issue that is staring
17 right in the face and that's the issue -- I don't care
18 how unpleasant it is or how much you may not want to
19 deal with that, we have to deal with it right now.

20 You have all talked about various reasons
21 for capital punishment. There were two that sort of
22 permeated your questionnaires and the discussions we
23 had. One was do we punish the offender to punish the
24 offender.

25 Ladies and gentlemen, I suppose some of

1 you can think that death is more of a punishment than
2 a life in the penitentiary. But I would submit to you
3 you think about that in the context of someone who has
4 a nine-month-old son that they will never be able to
5 touch and never be able to hold. I would submit to
6 you what life in the penitentiary means to someone who
7 is 41 years old, not 23 years old, 41 years old.

8 And what that means, according to the law
9 as the Judge presented it to you. We don't know if he
10 will ever get out, you are not to consider that but we
11 do know thing: He will be an 81-year-old man before
12 that option ever raises itself. We know that. I
13 personally, and some of you agree with me, some of you
14 didn't, can't imagine more of a punishment, if that's
15 what you really want is a punishment than to make
16 someone sit there for the rest of their life in that
17 confined institution, knowing that person, whatever
18 else he may be, is a family man, and knowing whatever
19 else he may be, that is deprived of him, just as he
20 deprived Mrs. Szucs of her husband and her family.
21 That is punishment.

22 Another issue you talked about that I
23 thought was the issue that goes to the heart of the
24 matter is several you indicated, well, capital
25 punishment adds finality to the family of the

1 deceased, for the family, for the Szucs, that if you
2 execute someone, that gives closure to them.

3 And I suppose that argument is right there
4 with the argument that we all talked about of an eye
5 for an eye and a tooth for a tooth. I quoted that
6 part of the scripture and a number of you talked about
7 the fact that this is closure, this is closure. If
8 it's scripture, you are looking at and if it's
9 religion, you are looking at, listen to me for a
10 moment.

11 You can look at the Old scriptures, at the
12 Jewish and the Christian scriptures, and you can find
13 the words "an eye for an eye, a tooth for a tooth."

14 You can go to the early part of the
15 scripture that deals with the history of retribution
16 and you can see retribution. You can see retribution,
17 especially in the history. A village would lose the
18 battle and the women raped and the children be killed
19 and the children hauled off into slavery.

20 That's when you look in the history of
21 what the Scriptures offer but when you look what the
22 Scriptures say in Western culture, be it a Judo
23 religion, what do the Scriptures say, the Scriptures
24 don't talk about the violence and a Scriptures say "an
25 eye for an eye and tooth for a tooth."

1 The Scriptures talk about when David
2 committed the murder that God felt that there was a
3 reason for him to still live and let him live and let
4 him do something.

5 If you look at the New Testament, it's
6 replete with second chances and the purpose for life,
7 not a purpose for death. If you want to look at the
8 Scriptures, you look at all the Scriptures and you
9 look at the underlines of the Scriptures. The
10 Scriptures don't say an eye for an eye and a tooth for
11 a tooth.

12 If you want finality for something, if you
13 want to give the family something, what are you going
14 to give them? More death? Everywhere I look, I see
15 it, death. It peeps out at from me from the file. It
16 comes from the witness stand. Ever since I talked to
17 you since the very beginning, that's all we have done
18 is talk about death. It leaks out from the courtroom
19 and it's lying around us and is that the finality we
20 give them? Is that true closure, another death?

21 Is that a real closure for a family? Hey,
22 we will close it by another death.

23 Closure can be life. It doesn't have to
24 be death.

25 And I would submit to you, if appropriate,

1 it's mandatory that closure should be life and not be
2 death.

3 There is issues to consider here. There
4 is legal issues. Special Issue Number One is the
5 defendant -- "beyond a reasonable doubt is there a
6 probability he is going to commit future acts of
7 violence that would constitute a continuing threat to
8 society"?

9 Now, you heard Dr. Brown. And Dr. Brown
10 is not a person you could deduct from what he said who
11 is going to get up there and say whatever a defense
12 attorney wants him to say. To the contrary, Dr.
13 Brown told you how it was, warts and all. He told you
14 about activity that doesn't help the client, drug
15 activity, drinking activity. That's not helping the
16 client.

17 But he also told you something that he
18 found remarkable and that makes these photographs come
19 alive, that makes these photographs important to you,
20 ladies and gentlemen, and that's this: He has seen
21 them. He has seen the people on death row. He knows
22 and he doesn't see the characteristics that those
23 people have in this man. He doesn't.

24 Now, he is not going to lie to you. He is
25 going to tell you straight up and the truth in that,

1 hey, my testing only can go so far. If my testing
2 would have said he would have gone out and committed a
3 capital murder, he would have testified to that. He
4 testified, hey, I don't want to be there if he ever
5 goes off again. But what did he say?

6 What he said was that this person, this
7 person, has a very good chance, a very good chance of
8 living in a prison environment and not being a
9 continuing threat.

10 And they, ladies and gentlemen, have to
11 prove to you beyond a reasonable doubt. Do you
12 remember what that was: Beyond a reasonable doubt
13 that he probably -- that he probably -- will commit a
14 future act of violence, short of a public indecency of
15 having carnal knowledge of someone in a park, we have
16 no criminal activity for 41 years. He would be 81.

17 You have a doctor that says that
18 probability on the State's part that they have to
19 prove to you beyond a reasonable doubt stands for one
20 thing, and I hate to say it but I suppose that what
21 the State has really proved to you is that if there is
22 a million dollars' worth of diamonds, this guy resorts
23 to murder. This guy would resort to murder. They
24 haven't proved to you that there is a probability that
25 he will be a future threat to society in prison and

1 that's the question that, by law, you have to answer.

2 The second question you have to, by law,
3 answer is did Ray Dennes anticipate the death of Janos
4 Szucs? Even if you believe Mr. Balderas, the person
5 that came up with some kind of murder and got to
6 talking to the State and worked a deal wherein he gets
7 to walk off free, depending on what his testimony may
8 or may not be from his perspective, even if you
9 believe everything he says beyond a reasonable doubt,
10 that would be consistent with the fact that Ray Dennes
11 is not up on the seventh floor, doesn't it? That's
12 consistent with someone else is up there, be it a
13 hench man that let him in or be it someone else.

14 Ladies and gentlemen, you may find him
15 guilty of parties but do you know beyond a reasonable
16 doubt that he anticipated what was going on the
17 seventh floor when the State has never put him on the
18 seventh floor?

19 I can go on an original verdict but now we
20 are talking about life or death and now is the part
21 where I stand up and I address you.

22 Issue Number Three, is there any
23 mitigating evidence or circumstances that warrant life
24 over death?

25 Mr. Smyth tells you there is not any.

1 Well, you get to decide what is mitigation and what
2 isn't. I can't tell you what is and isn't. But I can
3 give you some names.

4 Ray Dennes, his son, that's one issue
5 that's a mitigating issue. Number two, his daughter
6 is 12 years old. That's a mitigating issue. That
7 warrants life over death. And his son, he has never
8 held before, that's nine months old, that's a
9 mitigating issue. Number four, his family, his mother
10 and his sister, those are mitigating issues, and you
11 can't judge this issue and you can't decide that issue
12 in the vacuum. You can't only look to the
13 complainant. You have to go beyond that.

14 And another mitigating issue, I submit to
15 you, is his age. He is 41. A life sentence is just
16 that, a life sentence.

17 The Judge addresses you on legal issues.
18 He tells you you can believe this extraneous offense
19 evidence you have heard in regards to this home
20 invasion, if you want, but you have to believe it
21 beyond a reasonable doubt.

22 Ladies and gentlemen, do you realize what
23 you heard? You heard a guy that gets up there that
24 starts talking to the homicide division because of a
25 murder. They mention that they have heard his name on

1 home invasion. He knows this man is sitting in jail,
2 charged with this offense, and he says, with nothing
3 to support it, nothing to support it, "Hey, it was all
4 Ray's idea." And he tells you I hang around that
5 office all the time and I hang around the building all
6 the time and it's someone that worked in that building
7 because Ray said it was someone that worked in that
8 building.

9 Remember what she says, she doesn't work
10 in that building. Her husband doesn't work in that
11 building.

12 Ladies and gentlemen, what you just
13 witnessed, what you just saw, is the type of
14 testimony, the type of testimony, that makes all this
15 a mistake. That's what you just saw. You don't kill
16 someone based on that. I find it remarkable.

17 The Judge tells you, well, you heard that
18 there were two other people that actually did it, this
19 hench man that actually did it. Where are these phone
20 records? It's so replete with phone records in the
21 previous case. Unsubstantiated, uncorroborated and
22 highly suspect.

23 The Judge tells you, when you address
24 these special issues, you may not agree as to the
25 reasons why. You can have what you consider a

1 mitigating issue that your co-juror does not feel is a
2 mitigating issue. You can have your standard, what
3 makes someone decide beyond a reasonable doubt may
4 differ from your co-juror. That's why can you respect
5 and listen to your co-jurors, and if they defer with
6 you, after you talk to them about it, will you not
7 compromise your principles and your ideas. That's why
8 I asked that. We are not talking about issues of
9 evidence alone here.

10 We are talking about issues of what you
11 feel mitigates for or against life and what you feel
12 mitigates for and against the death, what you feel
13 beyond a reasonable doubt makes a person a probability
14 to be a future danger in society. And you get to
15 decide that a future danger in society for violence.
16 Does the fact that someone doesn't wear a shirt in
17 prison when he is suppose to or the fact that he
18 doesn't make up his bed or is it you have evidence
19 while he is in prison that he has resorted to
20 violence? He has been there for a year and a half.
21 You have no evidence before you of anti-social
22 behavior. If Mr. Vinson said probably, he didn't
23 follow orders and didn't follow orders but that's not
24 violence, not violence of future criminal acts to
25 society.

1 The State is going to talk to you about a
2 lot of things, and I anticipate they are going to talk
3 about the fact why should you show mercy to him. He
4 didn't show any mercy to Janos Szucs.

5 Ladies and gentlemen, we are answering
6 special issues that relate to him. We have tried the
7 murder case. Now we are trying the death phase of
8 this case.

9 They are going to talk to you, and they
10 did talk to you, about the family of the complaining
11 witness. You can't but help feel for the family of
12 Janos Szucs. Everyone feels for the family of Janos
13 Szucs. They would never feel -- I feel for the family
14 of Janos Szucs but if you put him to death, that
15 doesn't bring Janos Szucs back alive?

16 The issue is, the issue is, while in the
17 penitentiary, will he be a future danger and is there
18 a reason not to give him the death penalty. They will
19 tell you that he has forfeited his right for life. He
20 has forfeited his right to life when, and only when,
21 you have decided, only when you have decided he has
22 forfeited his right to life, and that, ladies and
23 gentlemen, when you know there is no reason for him to
24 live.

25 Is this one of the animals we have to kill

1 or is there still a reason for his life? Is there
2 still a purpose for his life, and is there still
3 something out there that his life can contribute to
4 somebody that would mitigate for it?

5 You can bash him with these photos and
6 talk about how bad this murder is all you want but the
7 issue here is the life of Ray Dennes and whether we
8 should take that life.

9 The Judge tells you -- and you have heard
10 he was unfaithful to his wife and he liked fast cars.
11 What are we willing to do to take a life? Is that the
12 State's reason for mitigation for death? If we kill
13 everybody that is unfaithful, this is going to be a
14 sad society.

15 You know, we execute people at 6:00 p.m.
16 That's when we do it. And ladies and gentlemen, I
17 don't care who actually reads the sentence. The
18 decision is in your hands. 6:00 p.m., when you are
19 coming home from work and driving in your car, you
20 hear that Ray Dennes has been executed and you have a
21 thought or hesitate as to whether your decision was
22 right or wrong, I would submit to you that decision
23 was right. And you may hate me right now because I am
24 putting all this guilt right on you. It's not guilt
25 at all. You bet I am playing on it. It's the

1 decision. It's the decision I am putting on you. And
2 while the State will tell you, he is the one that will
3 put it on you. He is responsible for you. It's still
4 in your hands.

5 THE COURT: Five minutes.

6 MR. ODOM: Thank you, Your Honor.

7 May I have additional time?

8 THE COURT: No.

9 MR. ODOM: If you make the wrong decision,
10 if you view no mitigating circumstances, if you make
11 the wrong decision, the consequences of it are
12 devastating.

13 Ladies and gentlemen, what are we talking
14 about here, just as you can't throw a rock into the
15 bay without all the bays of the ocean, you can't take
16 a human life without disturbing all lives. There are
17 people that this man can still be of value to. There
18 is at least one son who has told you that. There is
19 one son, we don't know if he will or not. He is too
20 young to tell you that. What will he say ten years
21 from now if he doesn't have that opportunity to know?
22 There is the daughter you didn't hear from and other
23 family members.

24 If we make the wrong decision, we have
25 done that one time too many. That's what we have

1 done. We have done it too many. One time too many
2 when we have taken a life, and it's our decision to
3 make. And it's done one time in civilization, reached
4 in the religion, that we base our home upbringing and
5 ideas around has been swept aside so we might deal
6 with what: with rage and with hate and vengeance.
7 It's one time too many -- if one time it is right, if
8 one time it is right.

9 You know, I told you, when in my closing
10 argument before, ladies and gentlemen, I am petrified.
11 I have never been here before. I have never done
12 anything like this before. I stand before you,
13 demanding and begging at the same time. I am begging.
14 I am begging for the life of someone that I think the
15 evidence tells you shouldn't die. I am demanding that
16 you remember the law and apply the law because the law
17 tells you if there is a mitigating circumstance, you
18 give life. You don't give death. You give life. You
19 don't give death.

20 The State will tell you there is no blood
21 on your hands. The only blood is on Ray Dennes's
22 hands.

23 Ladies and gentlemen, what you are
24 witnessing is the Judge giving you the law, the
25 prosecution giving you rage and rage to an extent is

1 appropriate. Rage is sometimes acceptable. That's
2 what they give you. They give you rage.

3 And at this moment in time, at this
4 particular instant where I stand, I am giving you the
5 truth. I am. I feel I am giving you life; whether he
6 did or didn't, I am. You can be like the person they
7 want you to execute, if you want, or you can take that
8 truth and you can breath on it and you can give
9 someone else, not this man, but someone else you can
10 give them a reason for this not to be all death and
11 not all bad.

12 I don't have another chance to talk to
13 you. I wish I did. But I don't. You are probably
14 glad that I don't. Well, I know that there is
15 something I could have said and I know down to me that
16 I could have done that is different if I just had the
17 ability to do it, if I could have reached in to let
18 you know I know it is there. I have to take what
19 little I had and deal with it. And my ideals may be
20 old and may be old fashioned, and I still stick to
21 them, but don't kill this man.

22 THE COURT: Thank you, Mr. Odom.

23 Mr. Vinson.

24 MR. VINSON: May it please the Court,
25 defense counsel, ladies and gentlemen, on behalf of

1 the State of Texas, I certainly welcome your verdict,
2 and like Mr. Smyth said, it was a proper verdict.

3 Mrs. Szucs also appreciates your verdict.

4 It's been a long trial. We tried to bring
5 to you as much evidence as we could because we knew
6 from the beginning there was no ifs, ands and buts.
7 We knew that a good jury would return this verdict and
8 we would reach this point so we didn't try to
9 sugarcoat it to you when we had our voir dire. We
10 told you like it is and like it was going to be.

11 The defense say we bring you rage and he
12 brings you the truth. Well, on January 24th, myself,
13 Mr. Smyth, I don't recall what we were doing on
14 January 24, 1996, but I can tell you this: We didn't
15 have any interest in Ray Dennes. We wasn't sitting
16 around our office scheming up something on Ray Dennes
17 so we can bring you what we call rage.

18 Every time we are brought into the
19 courtroom, we are brought into this courtroom by a
20 defendant's conduct. We don't sit in that office and,
21 look, we can scheme and, look, we can bring some rage
22 before the jury so the defense can bring the truth.

23 Now, you looked at the evidence that was
24 presented in this courtroom and you determined where
25 the truth lies. Obviously it's on this side because

1 you found the defendant guilty.

2 And you know it burns me up inside to hear
3 somebody stand here and try to put the burden on you
4 and tell me that Mr. Smyth and I bring you rage. I
5 would be derelict in my duty if I didn't present this
6 case to the best of my ability. Under the guidance
7 of the Court, we have done that and he says he don't
8 bring you rage. He don't know what rage is. Rage
9 should be in this lady's heart, this lady sitting
10 right here, Nicole Szucs, who this defendant decided
11 he would take her husband's life. Let's talk about
12 the truth.

13 And I won't beg you because the Judge has
14 instructed you in his charge. He said you are again
15 instructed that you are not to be swayed by mere
16 sentiment, conjecture, sympathy, passion, prejudice,
17 public feeling in considering all the evidence before
18 you in answering Special Issue Number Three, and we
19 will talk about that.

20 And moreover, the Judge also tells you --
21 he tries to make you think you just found somebody
22 guilty of murder. You found him guilty of capital
23 murder. Does he think your brain has left your body?

24 You are to consider everything His Honor
25 tells you right here, on the first page of the jury

1 charge, in determining your answer to the special
2 issue submitted to you. You should consider all the
3 evidence submitted to you in this whole trial -- in
4 this whole trial. And he goes on to give you the
5 further instruction. He doesn't tell you you find the
6 defendant guilty of murder you decide this. You find
7 him guilty of capital murder. Let's talk about some
8 of these things.

9 With Special Issue Number One that you
10 find in your jury charge, ladies and gentlemen, on
11 page number 11, and it says here: "Do you find from
12 the evidence beyond a reasonable doubt that there is a
13 probability that the defendant, Reinaldo Dennes, would
14 commit criminal acts of violence that constitute a
15 continuing threat to society? Answer: We, the jury,
16 unanimously" -- that means you all collectively.

17 Now, you can go back there and have
18 lengthy discussions on it. That's what you are
19 suppose to do but don't put yourself in a corner and
20 don't talk to each other because if you do that, the
21 defendant wins. He gains. Don't do that.

22 MR. ODOM: Object to his characteristic
23 how the jurors should act if the defendant wins or not
24 wins.

25 THE COURT: It's overruled.

1 MR. VINSON: Go back there and work
2 together. Remember you are the pulse of this
3 community. You are the one that is going to
4 determine, at least put some standard of conduct upon
5 people for their acts that they go out and commit.
6 You are going to establish that.

7 You go back there and you look at the
8 evidence. And when you are considering Issue Number
9 One, you can think what happens to Mr. Tsang's, his
10 little daughter, Christine? Was that planned?

11 Well, obviously it wasn't planned for Mr.
12 and Mrs. Tsang to become invaded but did Ray Dennes
13 care? He really didn't care. The only thing he
14 wanted was some diamonds. They sent nitwits out there
15 and they went into the wrong house, no big thing.
16 They are not my friends any more. Mind you, this is a
17 household where somebody makes his living working on
18 automobiles in that body repair shop. How would that
19 person know who has diamonds in that community and who
20 is supposed to live in that community unless he had
21 some connection with someone what had inside knowledge
22 or had reason to know that the man had diamonds, the
23 alleged targeted victim?

24 And if you notice, there was no discussion
25 in cross examination. You never met Ray Dennes and

1 you don't know David Balderas. That gives you a lot
2 about the defendant, who he was in association --

3 MR. ODOM: He is referring to the
4 defendant will tell you. I object to the failure to
5 testify.

6 MR. VINSON: I said, "It tells you a lot
7 about the defendant." That's what I said.

8 MR. ODOM: May I have a ruling?

9 THE COURT: Overruled.

10 MR. VINSON: That will tell you that he
11 was running around with David. And when he needed
12 somebody to do a job for him, David refused to do it,
13 go in himself but he said he will get somebody to do
14 it. Can you get somebody to do it?

15 And what did he do? He didn't care what
16 happened to those people in the home. He didn't care
17 about the diamond broker that lived in that house two
18 houses away. The only thing he wanted was the
19 jewelry. To show how greedy, he didn't sit there and
20 discuss with the people the breakdown. You bring it
21 to me. We get it first and then we will make that
22 decision. I would say had they been successful, they
23 probably -- don't you know they got about the same
24 thing Estrella, a couple of thousand. He walks off
25 with the rest.

1 He is a greedy, self-centered individual
2 but Dr. Brown couldn't tell you that. Remember that.
3 He did bring you a warning. He brought one warning.
4 When the defendant has another episode, he wouldn't
5 want to be around and he wouldn't want anybody else to
6 be around. What do you think he is doing? Are we
7 going to be so isolated inside where he can't bother?
8 He is going to the penitentiary and there is other
9 people up there. So think about that when you are
10 looking at this.

11 Is there a reasonable doubt about the
12 probability that the defendant would commit criminal
13 acts of violence that would constitute a continuing
14 threat to society. Just think about that.

15 Now, with that failed venture, it would be
16 like he said, "Enough is enough. I'm not going to get
17 involved in this any more." But 60 days passed and he
18 was engaged in it again.

19 And, again, look how that man works. First
20 of all, he selects his target, the victim, that is.
21 In this case, on the 24th, it happened to be Janos
22 Szucs. He selects someone who he has an established
23 relationship. Mr. Szucs had, at some point in time --
24 I know his ex-wife was reluctant -- at some point in
25 time he had to trust this defendant. There had to be

1 some trust. You don't let somebody in when you are
2 closed whether you had some trust. He gained the
3 trust of this man who sent him business, who had an
4 interest in him, who had an interest in him, who sent
5 him business. He gained his trust.

6 What did he do? He went out and recruited
7 people, again the conniving plan of this defendant who
8 can twist and get people to bend to his will.

9 He goes out and what does he do: He gets
10 Antonio to make a silencer. Now, that took time and,
11 again, Mr. Szucs is going to and fro from his business
12 on a daily basis and yet he doesn't know he is the
13 target of death. This defendant has already given him
14 a death warrant. He is a walking dead man. This lady
15 is sleeping with a walking dead man. It's only a
16 matter of time before he executes his plan.

17 And the defense is going to say I bring
18 you rage. That should insult you. We should live in
19 a better community than this.

20 Another thing, not only did he know his
21 target, he already had made up his mind that his
22 target was going to be dead and he wanted what? He
23 wanted the jewelry. He wanted the diamonds. He
24 wanted the cash and he wanted anything else liquid he
25 could get his hands on.

1 And he knew he was going to do it because,
2 by impulse, he went out and bought him a nice sports
3 car, a nice sports car. Well, he can have that to
4 drive from Houston, Louisiana, or wherever, and then
5 take his family on a vacation. Well, where do you
6 think that money came from, ladies and gentlemen?

7 Use your own common sense. Take his
8 mother and father and family, let's go on a vacation.
9 I'll just go down to the islands. Who cares, Mr.
10 Szucs is dead. He don't need it. I have taken care
11 of that matter.

12 Think about that. Think about that. When
13 you start thinking about this defendant, think about
14 Mr. Szucs. Try to think how does it feel, you are
15 dead and you are walking. How does it feel, you are
16 dead when you leave your home? How does it feel to
17 know you are dead and say good bye and drop you off
18 and never see your wife again and you never get a
19 chance to say anything to her again? How does it
20 feel? Think about that.

21 You can use all that when you refer to
22 Special Issue Number One. You can use all that
23 evidence.

24 Special Issue Number Two, "Do you find
25 from the evidence beyond a reasonable doubt that

1 Reinaldo Dennes, the defendant himself, actually
2 caused the death of Janos Szucs on occasion in
3 question, or if he did not actually cause the death of
4 Janos Szucs, that he intended to kill Janos Szucs or
5 that he anticipated that a human life would be taken."

6 Why would you make a silencer? The
7 question is answered. I'm not going to wordy you on
8 that. The question is answered. You are going up
9 there. You are going to rob Mr. Szucs. He knows you.
10 Why would you take a silencer? Why?

11 The answer speaks for itself. You don't
12 want any witnesses. This wasn't some nickel-and-dime
13 story. You are talking about 3.5 million or better
14 with the jewelry and diamonds and cash. We know a
15 substantial amount of cash was taken. What do you
16 think Mr. Szucs was going to do? Bye, Ray, have a
17 good trip. Of course, he is going to report it. So
18 he had to eliminate him.

19 And then look his conduct with respect to
20 Issues Number One and Two. Look his conduct when he
21 met Mr. Copeland. Mr. Copeland left his home that
22 morning to come to work that afternoon. He didn't
23 know that he is going to see his wife dead again but
24 for their defendant's conduct, based on just a
25 videotape, they want you to believe a videotape --

1 assume it is -- a person that is willing to kill over
2 a videotape, you tell me where there is some salvation
3 in his body. You tell me that.

4 Go back there -- and how many times have
5 you heard or said, "You mean to tell me, somebody
6 killed over dollars, somebody killed over this."

7 Ladies and gentlemen, you see that person
8 personified in this defendant right here in this
9 courtroom today. He is sitting right in here. And
10 that's what you are looking at. He walked right up to
11 Mr. Copeland and placed his hand on the shoulder and,
12 pow, didn't hesitate, didn't flinch, didn't back
13 down -- excuse me, I'm sorry, nothing. Mr. Copeland
14 made another move. From the reaction, he hit the
15 ground, startled, not realizing. The defendant backed
16 off and shot another shot. And, believe me, if Mr.
17 Copeland had moved again, he wouldn't be here to
18 testify. Those are serious wounds with intent to
19 kill. You think he is not dangerous? You think he
20 wouldn't do it again? Answer that yes and we all get
21 together.

22 And I am going to ask you to do it because
23 the evidence dictates. I'm not going to beg you to do
24 it because that would be inappropriate. That would be
25 inappropriate. This case did not come to you in that

1 manner. We are going to ask that you to follow the
2 law.

3 With respect to Issue Number Three, when
4 you go back there and you are dealing with Issue
5 Number Three, you look at what the Judge has
6 instructed you on. And you have answered yes, yes pm
7 Issues Number One and Two because you know it is the
8 right thing to do, then go to Issue Number Three.

9 "Do you find from the evidence, taking
10 into consideration all the evidence, considering the
11 circumstance of the offense," look the circumstances
12 of the offense. Look at that offense again. Look at
13 it: Had already picked the target, knew he was going
14 to kill him ahead of time and knew what he was going
15 to gain, what he thought he was going to get away
16 with, too. Look how it was done. Make sure that Mr.
17 Szucs had no one around him. Isolate him from his
18 loved ones. The defense attorney brought his loved
19 ones in.

20 You have got to do a balancing act here,
21 people. Don't you think Mr. Szucs had loved ones?
22 Do you think he just sprouted up one day?

23 He came to this country, too, and he tried
24 to do something in his life. Like Mr. Smyth says, the
25 evidence showed that he was decent, fine, respectable,

1 went to work and worked hard to take care of his wife.
2 And look at this defendant's moral culpability. Look
3 the defendant's moral culpability and the defendant's
4 moral blameworthiness.

5 Okay. You find him guilty of capital
6 murder, so you sure answered that issue. You found
7 him morally culpable. Because, remember, this offense
8 would never have got off the ground and it would still
9 be in the runway, if he hadn't triggered. He is the
10 one that got it rolling. He is the one that went out
11 and got it rolling.

12 So when he brings his family in here, when
13 he brings some picture in here of some young child
14 that defense counsel tells you that he has a
15 nine-month-old baby, explain to me how does that
16 explain his conduct to go out here and commit a
17 capital murder, take this lady's husband and attempt
18 to take Mr. Copeland's life and could care less what
19 happened to the home that was invaded to those people?

20 How does that explain his conduct?

21 And remember one thing that Dr. Brown
22 said: Dr. Brown said to you, he said this defendant
23 here, he could have given him that little paper test,
24 that series of tests could have been given six weeks
25 off from the offense. He could have made no

1 prediction what he was going to do. It tells you a he
2 was devious. He is a trained psychologist who can't
3 even deal with him. What do you think those people up
4 in TDC, in the Texas Department of Criminal Justice --
5 and real fancy name for it now -- what do you think
6 they are going to be able to do? That is a devious
7 mind sitting in this courtroom and he can get others
8 to do his will. You have seen it.

9 THE COURT: Five minutes.

10 MR. VINSON: You have seen it.

11 And I submit to you, give him the
12 opportunity, give him the place, and he will get those
13 to do his deeds. He is known for it because why?
14 That money has not been recovered. Those diamonds
15 have not been recovered.

16 What do you think he is going to do?

17 He will be the high man on the totem pole
18 there and, believe me, they will be lining up, when
19 they find out who he is, to do his deeds.

20 We also brought in here so that it would
21 assist you, we brought in Mr. Royce Smithey, a special
22 investigator? What did he tell you?

23 The defendant will go in. He will be in
24 diagnostic and sometime he will be released in prison
25 and with people in there with DWIs and other lower

1 level offenses. He is not going to walk around in the
2 prison unit with a big sign on his head saying I am a
3 capital murderer. You have got people coming and
4 going, want to know who they are dealing with, won't
5 have any idea who they are dealing with. Well, can we
6 make a mistake?

7 The mistake was made when that defendant
8 chose to execute because that's what he did. He
9 executed Mr. Szucs. He executed him. He was the
10 judge, he was the jury and his executioner. At least
11 you will not be his executioner.

12 The only thing you are to do are to answer
13 the questions. And you promised us on voir dire, and
14 I know you can still keep that promise, you said that
15 you would answer those issues according to the law and
16 the evidence. And when you go back there and you find
17 out what is mitigating, ask yourself, remember the
18 State has no burden. Go back there and say how does
19 having a family mitigate what he did? Because if
20 that's the rule, if that is it, then everyone who has
21 a decent family can go out here and become a hit man
22 and come to court and drag your family. "I have got a
23 decent family."

24 I do know the young boy has accomplished a
25 lot from his own sweat and he got a scholarship from

1 there and he appears to be -- he didn't say daddy gave
2 me a scholarship. Daddy gave me this. Not one time
3 did he ever say that I love daddy. Not one time.
4 Now, it was their witness -- not one time. That was a
5 show boat.

6 Now, ladies and gentlemen, remember, when
7 justice is denied, we all become victims. We all
8 become victims, and there is one way that you can say
9 to this defendant here that we are not going to become
10 your victim. We are not going to go into the jury
11 room with this burden on our backs. We didn't ask for
12 it, and I know each and every one of you would rather
13 be some place else. And on 24th of January, you
14 didn't know nothing else, you would be prefer to. You
15 are not here and, believe me, if the State legislature
16 trusts you as well and they have given you an
17 abundance of power here and right now you hold more
18 power in your hands than anyone in the State of
19 Texas. It's what you do with it.

20 Now, the defense says you are driving home
21 and you hear on the radio this defendant had been
22 executed, then you should say to yourself hallelujah.
23 There shouldn't be no second thoughts there. You can
24 take it, like after, when you are driving home, and,
25 bam, Ray Dennes has been involved or did something

1 else, injured someone else, and then you will be
2 second-guessing. I could have saved that person. I
3 could have prevented that but I let it slip through my
4 hand. Don't do it.

5 THE COURT: One minute.

6 MR. VINSON: Thank you, Your Honor.

7 Don't do it. Exercise the power that you
8 are given through this Court's jury charge. Exercise
9 the power, based on the evidence that we presented to
10 you here. And, again, it takes some time. It takes a
11 real stern hand to hold and a half gate that slip in
12 the troubled waters. That's where we are in this
13 community. Like I say, you can be the conscience of
14 this community.

15 When you go home tonight, one thing you
16 will know. If you return that verdict that causes the
17 defendant to be sentenced to death, one thing you will
18 know: At some point in time Ray Dennes will never be
19 in a position to hurt someone else or manipulate.
20 Short of that, you don't know what he is going to do.
21 You can't go back there and start talking about get 40
22 years and the Judge has instructed you on that. You
23 are not to consider.

24 MR. ODOM: That's not what the law says.
25 It's not to consider parole after that.

1 MR. VINSON: I will read it to you.

2 MR. ODOM: Object, misstatement of the
3 law, Your Honor.

4 THE COURT: Overruled.

5 MR. VINSON: I think on page seven, if you
6 go back there, during your deliberations, "You are not
7 to consider or discuss the possible action of the
8 board of pardons or the governor, nor how long the
9 defendant would be required to serve to satisfy a life
10 sentence." It tells you. His Honor gave it to you.

11 THE COURT: Let's wrap it.

12 MR. VINSON: And remember that's the law
13 today.

14 MR. ODOM: Object that is -- that it will
15 change tomorrow or something like that. It's an
16 inappropriate comment.

17 THE COURT: It's overruled.

18 Mr. Vinson, I'll give you 15 seconds.

19 MR. VINSON: That's the law today, ladies
20 and gentlemen.

21 So I have to leave you now but you go back
22 there and you are strong enough to answer those issues
23 and strong enough with the same determination that you
24 came back and hold this defendant. He was guilty on
25 this verdict under the indictment that we charged him

1 under and tried to you and answered those issues yes,
2 yes, no. And you'll feel good about yourself. Thank
3 you.

4 THE COURT: Thank you, Mr. Vinson.

5 Ladies and gentlemen, you have now heard
6 all the evidence in the punishment phase and heard all
7 arguments of counsel. I ask that you go back with the
8 bailiff and commence your deliberations at this time.
9 And we will stand in recess until you have reached a
10 unanimous verdict. If it's a yes, yes, no, remember
11 what the instructions told you in the charge, if the
12 other answers on one or two are no, it must be ten
13 that agree on such. And we will stand in recess until
14 you have reached a verdict in this case.

15 (Jury left the courtroom.)

16 THE COURT: Please be seated.

17 (Jury came into the courtroom.)

18 THE COURT: Please be seated.

19 Ladies and gentlemen, we have reached the
20 6:00 o'clock hour. And when I told you, when you
21 first started, I would call you out about this time to
22 inquire basically as to whether or not you would like
23 to continue this evening to deliberate, if you feel
24 that would make progress, or what time you say you
25 would like to stop. And like I said, you are being,

1 as I told you earlier, sequestered.

2 I need to know from your foreman if you
3 would like to continue to deliberate further into the
4 evening or retire to quarters this evening and start
5 back tomorrow and poll yourself and see what you would
6 like to do.

7 A JUROR: Can we retire to deliberate
8 this?

9 THE COURT: If not, let me tell you, if
10 you do deliberate further, I don't think there will be
11 a whole lot and we can order a dinner and we are all
12 prepared to stay as long as you like to but let me
13 know if you want to deliberate longer but if you are
14 going to deliberate for a period of time, it will be
15 getting around the dinner hour, and let me know and we
16 will make arrangements for dinner.

17 THE FOREMAN: We will stay awhile.

18 THE COURT: Should we make arrangements
19 for dinner? Are you all getting hungry?

20 A JUROR: We would like more cream.

21 THE COURT: We will continue to deliberate
22 until I hear from you and pull you out and continue
23 this process and it's at your convenience. At that
24 point in time, before then, if you all are getting
25 hungry, and let us know and we will make arrangements

1 for dinner.

2 (Jury left courtroom.)

3 (Jury came into the courtroom.)

4 THE COURT: Please be seated.

5 Where are you, Mr. Kappes?

6 THE FOREMAN: I think we need some more
7 time.

8 THE COURT: Very well. What are the
9 arrangements for the bus?

10 THE BAILIFF: I have to call as soon as we
11 get everything together.

12 THE COURT: We are going to take you by
13 bus to the Holiday Inn Medical Center where we will
14 get you situated. The restaurant is open until 10:30,
15 and we will have dinner. You will each have your own
16 rooms, no television, no telephone, no newspapers.
17 That's just the way the system works. I'm sorry. I
18 want you back here at 8:00 o'clock in the morning. Do
19 not go downstairs. Come directly up to the courtroom
20 and proceed into the jury deliberation room.

21 You are not to commence your deliberations
22 until all 12 of you are here. You are all going to be
23 together. When all 12 of you get in the room, you can
24 continue deliberations until such time as you have
25 reached a unanimous verdict.

1 Remember all the admonishments I have
2 given you. If there are any questions about
3 procedure, anything that you need to ask about
4 spending the night to answer, I will.

5 THE FOREMAN: Will we be able to go back
6 to our cars?

7 THE COURT: The bailiff will arrange all
8 that. You have to remain together as a group. Like I
9 say, I don't know how they work around or whatever
10 time you need to be woken. I guess the bus will be
11 there at whatever appropriate time to make sure you
12 are back here at 8:00 o'clock so you had a chance to
13 have breakfast. And I can't think of anything else I
14 need to talk to you about except have a pleasant
15 evening, and I apologize that this is required but
16 this is the way the system works. And I can see all
17 of you -- I'll be here at 8:30. So commence your
18 deliberation with the goal to see what we can
19 accomplish tonight. We will stand in recess until
20 morning. Remember they will bring you directly up
21 here.

22 (Court adjourned for the day.)
23
24
25

1 September 4, 1997

2 (Jury came into the courtroom.)

3 THE COURT: Please be seated.

4 Mr. Kappes, has the jury provided answers
5 to the three special issues?

6 THE FOREMAN: Yes, sir.

7 THE COURT: Would you please hand your
8 jury verdict to the bailiff.

9 Will the defendant please stand.

10 "Special Issue Number One, do you find
11 from the evidence beyond a reasonable doubt that there
12 is a probability that the defendant, Reinaldo Dennes,
13 would commit acts of violence that would constitute a
14 continuing threat to society. Answer: We, the jury,
15 unanimously find and determine beyond a reasonable
16 doubt that the answer to this special issue is yes,"
17 signed foreman of the jury.

18 "Special Issue Number Two, do you find
19 from the evidence beyond a reasonable doubt that
20 Reinaldo Dennes, the defendant himself, actually
21 caused the death of Janos Szucs, on the occasion in
22 question, or if he did not actually cause the death of
23 Janos Szucs, that he intended to kill Janos Scuzs, or
24 that he anticipated that a human life would be taken?
25 Answer: We, the jury, unanimously find and determine

1 beyond a reasonable doubt that the answer to the
2 special issue is yes," signed foreman of the jury.

3 "Special Issue Number Three, do you find
4 from the evidence, taking into consideration all the
5 evidence, including the circumstances of the
6 defendant's character and background, and the personal
7 moral culpability of the defendant, Reinaldo Dennes,
8 that there is sufficient mitigating circumstance or
9 circumstances to warrant that a sentence life
10 imprisonment rather than a death sentence be
11 provided," -- which I I want no outburst in the
12 courtroom. I will hold you in the contempt if any
13 outbursts whatsoever from anybody that is seated.

14 Answer to the question: "We, the jury,
15 unanimously find answer that the answer to this
16 special issue is no," signed foreman of the jury.

17 "We, the jury, return in open court the
18 above answers to the special issues submitted to us.
19 It is our verdict in this case." Signed foreman of
20 the jury.

21 Mr. Odom, is there any request to poll?

22 MR. ODOM: Yes, Your Honor.

23 THE COURT: Ladies and gentlemen, just as
24 in the guilt, I'll number you one through six.

25 (Judge polled the jury and all affirmed

1 the verdict.)

2 THE COURT: Thank you. Your services
3 toward the State in this case are now complete. If
4 you will go with the bailiff into the jury room, I'll
5 be back there to meet with you in just a moment.

6 (Jury left the courtroom.)

7 THE COURT: Please be seated.

8 I'm sorry. Please be seated. I figure
9 you can stay for the rest as well.

10 It is the order of the Court that you,
11 Reinaldo Dennes, the defendant, herein who has been
12 adjudged to be guilty of the offense of capital murder
13 and whose punishment has been assessed by the verdict
14 of the jury at death shall be delivered by the Sheriff
15 of Harris County immediately to the director of the
16 Institutional Division of the Texas Department of
17 Criminal Justice, or any other person legally
18 authorized to receive such convicts, there to be
19 confined in the said institutional division in
20 accordance with the provisions of the law governing
21 the Texas Department of Criminal Justice Institutional
22 Division until a date for your execution is imposed by
23 this Court after receiving the mandate of affirmance
24 from the Court of Criminal Appeals. The defendant is
25 remanded to the Sheriff so he can obey and carry out

1 the order of this sentence.

2 Now, ladies and gentlemen, if you will go
3 with the bailiff.

4 (Jury adjourned in this case.)

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APPELLATE COURT NO. 72966

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

REINALDO DENNES

Appellant,

VS.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM 263RD DISTRICT COURT OF HARRIS COUNTY,
TEXAS

Judge Jim Wallace, Presiding

CAUSE NO. 750,313

November 6, 1997

Reporter's Record

Volume 36 of 39 Volumes

Sharon Kay Cook
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED IN
COURT OF CRIMINAL APPEALS

FEB 25 1998

Troy C. Bennett, Jr., Clerk

2025

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

IN RE: THE SECURITIES OF THE BANK OF AMERICA CORP.

Case No. 14-cv-00019

Memorandum

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FOR THE COURT

FILED

CLERK OF COURT

U.S. DISTRICT COURT

FILED

U.S. DISTRICT COURT

U.S. DISTRICT COURT

U.S. DISTRICT COURT

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3	Marked	Volume 35	4
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8	Defendant's Exhibit No. 2 motion for continuance		
9	Marked	Volume 35	4
10	Identified	Volume 35	5
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14	Defendant's Exhibit No. 3		
15	Marked	Volume 35	4
16	Identified	Volume 35	5
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20	Defendant's Exhibit No. 4 motion to transfer motions		
21	Marked	Volume 35	4
22	Identified	Volume 35	5
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25	Shown	Volume 39	

1 Defendant's Exhibit No. 6 motion for continuance

2 Marked Volume 35 4

3 Identified Volume 35 5

4 Identified Volume 35 8

5 Admitted Volume 35 8

6 Shown Volume 39

7 Defendant's Exhibit No. 7 request for notice of intent
8 to offer extraneous conduct at punishment

9 Marked Volume 35 4

10 Identified Volume 35 5

11 Offered Volume 35 8

12 Admitted Volume 35 8

13 Shown Volume 39

14 Defendant's Exhibit No. 8 motion for discovery

15 Marked Volume 35 4

16 Identified Volume 35 5

17 Offered Volume 35 8

18 Admitted Volume 35 8

19 Shown Volume 39

20 Defendant's Exhibit No. 9 statement of facts

21 Marked Volume 35 4

22 Identified Volume 35 5

23 Offered Volume 35 8

24 Admitted Volume 35 8

25 Shown Volume 39

1	Defendant's Exhibit No. 10 motion for continuance		
2	Marked	Volume 35	4
3	Identified	Volume 35	5
4	Offered	Volume 35	8
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7	Defendant's Exhibit No. 11 docket sheet		
8	Marked	Volume 35	4
9	Identified	Volume 35	5
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11	Admitted	Volume 35	8
12	Shown	Volume 39	
13	Defendant's Exhibit No. 12 motion		
14	Marked	Volume 35	4
15	Identified	Volume 35	5
16	Offered	Volume 35	8
17	Admitted	Volume 35	8
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19	Defendant's Exhibit No. 13 motion		
20	Marked	Volume 35	4
21	Identified	Volume 35	6
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1	Defendant's Exhibit No. 14 motion		
2	Marked	Volume 35	4
3	Identified	Volume 35	6
4	Offered	Volume 35	8
5	Admitted	Volume 35	8
6	Shown	Volume 39	
7	Defendant's Exhibit No. 15 indictment, pre-trial		
8	interview sheet, motion to dismiss		
9	Marked	Volume 35	4
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11	Offered	Volume 35	8
12	Admitted	Volume 35	8
13	Shown	Volume 39	
14	Defendant's Exhibit No. 16 copy of Clerk's file		
15	Marked	Volume 35	4
16	Identified	Volume 35	6
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19	Shown	Volume 39	
20	Defendant's Exhibit No. 17 copy of clerk's file		
21	Marked	Volume 35	4
22	Identified	Volume 35	6
23	Offered	Volume 35	8
24	Admitted	Volume 35	8
25	Shown	Volume 39	

1	Defendant's Exhibit No. 18		
2	Marked	Volume 35	4
3	Identified	Volume 35	6
4	Offered	Volume 35	8
5	Admitted	Volume 35	8
6	Shown	Volume 39	
7	Defendant's Exhibit No. 19		
8	Marked	Volume 35	4
9	Identified	Volume 35	6
10	Offered	Volume 35	8
11	Admitted	Volume 35	8
12	Shown	Volume 39	
13	Defendant's Exhibit No. 20 attorney's notes		
14	Marked	Volume 35	4
15	Identified	Volume 35	19
16	Offered	Volume 35	19
17	Admitted	Volume 35	19
18	Shown	Volume 39	
19	Defendant's Exhibit No. 21 notice to use extraneous		
20	Marked	Volume 35	4
21	Identified	Volume 35	68
22	Identified	Volume 35	68
23	Admitted	Volume 35	69
24	Shown	Volume 39	
25			

1 Defendant's Exhibit No. 22

2	Marked	Volume 35	4
3	Identified	Volume 35	68
4	Offered	Volume 35	68
5	Admitted	Volume 35	
6	Volume	Volume 39	

7 Defendant's Exhibit No. 23

8	Marked	Volume 35	4
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10	Offered	Volume 35	68
11	Admitted	Volume 35	
12	Shown	Volume 39	

13 Defendant's Exhibit No. 24 motion quash subpoena/bench
14 warrant

15	Marked	Volume 35	
16	Identified	Volume 35	92
17	Offered	Volume 35	92
18	Admitted	Volume 35	92
19	Shown	Volume 39	

20 Defendant's Exhibit No. 25 bench warrant return

21	Marked		
22	Identified	Volume 35	92
23	Offered	Volume 35	92
24	Admitted	Volume 35	92
25	Shown	Volume 39	

1	Defendant's Exhibit No. 26 NCIC report		
2	Marked		
3	Identified	Volume 35	94
4	Offered	Volume 35	94
5	Admitted	Volume 35	94
6	Shown	Volume 39	
7	Defendant's Exhibit No. 27 juror questionnaire		
8	Marked		
9	Identified	Volume 35	95
10	Offered	Volume 35	97
11	Admitted	Volume 35	Bill
12	Shown	Volume 39	
13	State's Exhibit No. 1 large chart		
14	Marked	Volume 35	128
15	Identified	Volume 35	128
16	Offered	Volume 35	128
17	Admitted	Volume 35	128
18	Shown	Volume 39	
19	State's Exhibit No. 2 large chart, copy of S-1		
20	Marked		
21	Identified	Volume 35	153
22	Offered	Volume 35	153
23	Admitted	Volume 35	153
24	Shown	Volume 39	
25			

1 CAUSE NO. 750,313

2 STATE OF TEXAS

IN THE 263RD DISTRICT COURT

3 VS.

OF

4 REINALDO DENNES

HARRIS COUNTY, T E X A S

5
6 A P P E A R A N C E S:

For the State:

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18
19 BE IT REMEMBERED that upon this the 6th

20 day of November, A. D. 1997, the above entitled and

21 numbered cause came on for trial before the Honorable

22 Jim Wallace, Judge of the 263rd District Court of

23 Harris County, Texas; and the State appearing in

24 person and the Defendant appearing in person and by

25 counsel, announced ready for Motion for New Trial, and

1 all preliminary matters having been disposed of, the
2 following proceedings were had, viz:

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1 THE COURT: We are ready to the start on
2 the first amended motion for new trial.

3 Is the State ready to proceed?

4 MR. VINSON: State's ready to proceed.

5 THE COURT: For the record, let's make
6 sure we have everybody here.

7 Would you state your name, for the record,
8 and all counsel state their name for the record.

9 MR. VINSON: Mark Vinson, Harris County
10 District's Attorney Office.

11 MR. SMYTH: Don Smyth, Harris County
12 District Attorney's Office.

13 THE COURT: Is the defense is --

14 MS. KAHN: Leora Kahn, representing the
15 defendant, Reinaldo Dennes.

16 Your Honor, at this time I have asked
17 counsel, Stanley Schneider and Mike Charlton, to
18 assist me in this motion for new trial with the
19 Court's permission.

20 THE COURT: Certainly. Let's proceed.

21 MR. CHARLTON: If the Court would permit
22 me to lead off, we have some preliminary matters that
23 we think will save some time. With your permission, I
24 would like to go into them.

25 At this point we are not really abandoning

1 but we are not going to go forward on any of the
2 paragraphs in the motion for new trial except
3 paragraphs 7, 13 and 14. Those are the only ones that
4 we are going -- those are the only paragraphs which we
5 are going to support with evidence. And in light of
6 that, if I could approach the bench with counsel for
7 the State.

8 THE COURT: Very well.

9 MR. CHARLTON: We have certain documents
10 that we would like to move to introduce into evidence,
11 and we will be asking the Court to judicial notice of
12 their admissibility. And if you will permit me so
13 that the record is clear and I can recite.

14 (Whereupon, Defendant's Exhibit Nos. 1
15 through 28 were marked for identification.)

16 MR. CHARLTON: The first one we will be
17 asking is Defendant's Exhibit 1. It is a motion to
18 adopt motions of the codefendants, the codefendant
19 being Jose Dennes, and the motion being prepared and
20 filed by Wendell Odom, the defendant's trial counsel.

21 Number two is a defendant's first motion
22 for continuance filed by Mr. Odom in this case. It
23 was filed, I believe, on January 13 of 1997.

24 Number 3 -- I apologize for having these
25 things out of order, I may have misnumbered -- at any

1 rate Defendant's 4 is a motion to transfer motions
2 filed by Mr. Odom on behalf of the defendant, Reinaldo
3 Dennes; number 5 is the First Amended Motion for New
4 Trial; number 6 is a motion for continuance filed by
5 Mr. Dennes and filed with this Court on July 24, 1997;
6 number 7 is a request for notice of intent to offer
7 extraneous conduct at the punishment filed by Mr. Odom
8 and addressed to Mr. Rosenthal of the Harris County
9 District Attorney's Office; number 8 is discovery for
10 extraneous matters to be presented by the State under
11 37.071 and 37.07 of the Code of Criminal Procedure
12 filed by Mr. Odom on behalf of Mr. Dennes; number 9 is
13 a transcript of the Court's -- specifically pages
14 five, six, seven, and eight -- transcript of the
15 hearings on your orders about notice of extraneous
16 offense -- the hearing was January 13 '97; defendants
17 10 is a third motion for continuance filed by Mr. Odom
18 on behalf of Mr. Dennes, and it is dated August 18,
19 1997; number 11 is a docket sheet from a J.P. Court
20 from justice court, Precinct 1, Position 2 that
21 charges an individual named Irene Umshteim Collins on
22 this docket sheet, which the record later reflected is
23 a person that served as a juror in this particular
24 case and charging her with the offense of theft on
25 February 1985, a charge that was dismissed in August

1 of '91; Defendant's 12 is a motion filed on behalf of
2 Mr. Parnham for the defendant, Jose Dennes -- this is
3 one of the motions that Mr. Odom moved to be adopted
4 in this case -- motion asking for equal access to the
5 background information on the perspective jurors;
6 number 13 is a motion -- another motion to adopt
7 motions of the codefendant filed by Reinaldo Dennes
8 and his attorney Wendell Odom; number 14 is a motion
9 to prohibit the introduction of the extraneous
10 offenses at the punishment phase of the trial filed on
11 behalf of Mr. Reinaldo Dennes by his counsel, Wendell
12 Odom.

13 I'm sorry, here is number 3. Number 3 is
14 questionnaire, two separate jury questionnaires,
15 filled out or prepared by Irene Umshteim Collins. And
16 Ms. Collins served as a juror in this particular
17 case. And this first page is the short form sent to
18 her by the district clerk for the summons.

19 The next 15 to 20 pages of Defendant's 3
20 is the long form questionnaire that was filled out
21 prior to voir diring the capital case; and then we
22 have number 15, which is a -- excuse me -- an
23 indictment, a motion to dismiss, and a Harris County
24 pre-trial services form on a man named David Rene
25 Balderas. And that will become relevant in the course

1 of our argument.

2 We also haven't prepared this motion. We
3 would have to ask the Court to allow substitution of
4 copies. We are asking that these documents be copied
5 and made part of this transcript so we haven't marked
6 them.

7 THE COURT: Anything that is entered?

8 MR. CHARLTON: And this is the first one
9 is Cause No. 9347066. It is an information charging
10 Irene Renie Collins with the offense of public
11 lewdness, to wit, placing her exposed buttocks against
12 the clothed genitals of R. Leija in a public place,
13 namely Riviera Cabaret.

14 9304928 charging Ms. Collins with
15 prostitution. Both of these resulted in convictions
16 and probated sentences.

17 THE COURT: That's not what I heard.

18 MR. SMYTH: Deferred adjudication.

19 MR. CHARLTON: Whatever the judgments say,
20 I will stand by whatever that judgments say.

21 And we would ask that the Court then -- we
22 have shown these copies to the State that we have been
23 reciting and judicially notice all the records for
24 their admissibility so the Court can consider them as
25 part of our argument.

1 THE COURT: What says the State?

2 MR. VINSON: In each cause number, why
3 don't we do it this way. Why don't we take the
4 allegations in the respective cause numbers and deal
5 with the admissibility of documents first.

6 MR. CHARLTON: All these documents we are
7 asking judicially to admit.

8 MR. VINSON: I have no objection, Your
9 Honor.

10 THE COURT: Very well. They are admitted
11 for that purpose.

12 MR. CHARLTON: We have Ms. Kahan who would
13 ask me to ask the Court to take judicial notice of all
14 of the documents that are filed in this Cause No.
15 750,313, which was essentially all the documents filed
16 in the respective cause numbers for Mr. Dennes.

17 THE COURT: Sure.

18 MR. CHARLTON: And I think the State and I
19 have agreed on a certain factual matters, which we
20 can, rather than call witnesses and questions and
21 answers, we can, if it's okay with the Court, move to
22 proffer.

23 THE COURT: That's fine.

24 MR. CHARLTON: State has no objection, I
25 assume?

1 MR. VINSON: We don't have any objection.

2 THE COURT: Very well.

3 MR. CHARLTON: We would proffer then the
4 testimony of Ms. Collins is that she is the same
5 individual who was convicted -- or whatever the term,
6 whether it's deferred or convicted -- charged with, at
7 least, in the prior prostitution case and the prior
8 theft case and the prior public lewdness.

9 THE COURT: The theft case?

10 MR. CHARLTON: J.P. Precinct.

11 MR. VINSON: The theft case was not -- I'm
12 not aware of the theft case.

13 THE COURT: That's the first I have heard
14 of it.

15 MR. CHARLTON: Do you want to ask her if
16 she is or call her as a witness?

17 MR. VINSON: Get her up here.

18 MR. CHARLTON: I don't have a problem with
19 that. Do you want to ask her?

20 MR. VINSON: Really right --

21 THE COURT: Okay.

22 MR. VINSON: Can we clarify that later?

23 THE COURT: Certainly. Let's not forget
24 to do that.

25 MR. CHARLTON: I wanted to correct one of

1 the prior recitations between Mr. Smyth and Mr. Vinson
2 and Mr. Schneider that the two prior, at least, public
3 lewdness are deferred adjudication, as they are not
4 probations, and I apologize to the Court for
5 misleading.

6 THE COURT: No problem.

7 MR. CHARLTON: Anyway that she is the same
8 individual.

9 THE COURT: Okay. Anything further?

10 MR. CHARLTON: At this point?

11 THE COURT: As far as the proffering.

12 MR. CHARLTON: No, sir. And we will call
13 Wendell Odom.

14 THE COURT: The rule is invoked. All
15 those who give plan to testimony in this case please
16 stand and raise your right hand.

17 (Witnesses sworn.)

18 THE COURT: The rule has been invoked.
19 Would you please leave the courtroom and not discuss
20 with anyone your testimony until you are called.

21 MR. CHARLTON: If the Court will permit
22 me, because I will be approaching, asking permission
23 to approach the witness from time to time and use
24 those documents, would you permit me to examine him
25 from this position so in order to avoid. I'll be

1 happy to sit at counsel table, if you would.

2 THE COURT: Considering we don't have a
3 jury here, that's fine, whatever is basically most
4 expedient.

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WENDELL ODOM,

was called as a witness by the Defendant, and was duly sworn and testified as follows:

EXAMINATION

BY MR. CHARLTON:

Q For the record, you are Wendell Odom. And you were the trial counsel for the defendant in this cause, Mr. Reinaldo Dennes; is that correct?

A That's correct.

Q And just for background information, when did you first come on board to defend Mr. Dennes?

A I don't know the exact date I came on board to defend Mr. Dennes.

Q Can you give me an approximation how long you represented him before the trial for a year?

A About a year, yes, sir.

Q How long have you been a lawyer?

A For 23 years.

Q When you first became a lawyer, what was your first job?

A I was a briefing attorney for the criminal district judges here in Harris County, Texas. It was a government grant for the briefing attorneys at that time.

Q And from that job, where did you go?

1 A I went to the Harris County District
2 Attorney's Office. I was an assistant district
3 attorney of Harris County for four years. And then I
4 went from the Harris County District Attorney's Office
5 to the US Attorney's Office. And I was an assistant
6 United States attorney in the Southern District of
7 Texas for a period of three years.

8 At that time I left the United State's
9 Attorney's Office and went into private practice with
10 a group of people that I have been practicing with for
11 the last 13 some odd years.

12 Q Do you hold any honors in the State bar?
13 Are you board certified?

14 A I am not board certified.

15 Q Has your practice been primarily in the
16 field of criminal defense since you left the US
17 Attorney's Office?

18 A My practice is exclusively in the area of
19 criminal defense.

20 Q You have tried then a lot of cases?

21 A Yes, sir.

22 Q And I know you don't like to brag but you
23 are a highly regarded defense lawyer in the bar, the
24 criminal defense bar of Harris County, are you not?

25 A Perhaps.

1 Q You've voir dired many, many juries?

2 A I have.

3 Q Would you agree with me that at least one
4 of the purposes of voir dire is to find out as much
5 information as you possibly can about people who will
6 serve on your client's jury?

7 A I would agree that's the primary purpose
8 of voir dire.

9 Q And when you go to voir dire, what
10 information are you looking for? I mean, what
11 documents do you rely on in the course of your voir
12 dire to get this information?

13 A If I have documents before me, I rely on a
14 questionnaire, if it has been filled out. I certainly
15 rely upon the testimony of the venireman, venire
16 persons, but as far as documents, if there hasn't been
17 an investigation done on them, I rely primarily on the
18 questionnaire I have been looking at and has been
19 submitted to the voir dire person.

20 MR. CHARLTON: May I approach, Your
21 Honor?

22 THE COURT: Certainly.

23 Q I will show you what has already been
24 marked and entered into evidence as Defendant' Exhibit
25 3 and ask you if that is a jury questionnaire of an

1 Irene Collins, a person who served on the jury in this
2 cause?

3 A Yes, sir, it is.

4 Q Do you see attached to that questionnaire
5 any document indicating a criminal history of Ms.
6 Collins?

7 A You mean in the entire docket, exhibit
8 number 3?

9 Q No, a separate form, separate and apart
10 from that questionnaire, that would suggest a criminal
11 history of Ms. Collins other than the questionnaires
12 themselves?

13 A Is your question in exhibit number 3 do I
14 see anything that indicates a criminal record?

15 Q What I am looking for is other than the
16 questions themselves -- and you have discussed the
17 questions -- other than the questions is there any
18 other kind of form which would suggest her criminal
19 history?

20 A No, sir.

21 Q Now, when you were engaged in voir dire,
22 did you have anyone assisting you?

23 A At various times I would have some
24 assistance. At other times I had no assistance.

25 Q And can you describe briefly, for the

1 Court, the nature of that assistance?

2 A For the first two days, I believe, there
3 was another attorney who has tried several capital
4 murder cases that assisted me in the voir dire.

5 Q And that was Randy McDonald?

6 A Randy McDonald -- who I office with --
7 after that, there was no other legal person -- there
8 was no other lawyer who assisted me in voir dire. I
9 did have a paralegal as such, a person that was
10 starting law school that would sit down with me and
11 help me organize and try to maintain the papers and do
12 some notes, but as far as another attorney or as far
13 as anyone assisting me in the voir dire, it would have
14 only been support person such as that.

15 Q Was your paralegal a man or a woman?

16 A It was a woman.

17 Q Did she -- was part of her function to
18 review jury questionnaires and take notes?

19 A Yes, sir.

20 Q And did both of you take notes of each of
21 the people you examined?

22 A Yes, both prior to the examination as well
23 as during the examination.

24 Q And prior examination notes were based on
25 your examination of the questionnaires?

1 A Yes, sir.

2 Q Did you rely on answers given in these
3 questionnaires to give you the scope or the direction
4 of your voir dire?

5 A I did.

6 Q Have you in connection before this motion
7 for the new trial hearing, have you reviewed those
8 notes?

9 A Yes, sir.

10 Q Have you reviewed your paralegal's notes?

11 A Yes, sir.

12 Q Have you found any indication in those
13 notes that Ms. Collins had a criminal record other
14 than what was in that jury questionnaire?

15 A No, sir.

16 Q You now have known that Ms. Collins has a
17 criminal record?

18 A I was informed of that.

19 Q Do you know it to be some difference than
20 what's in that questionnaire?

21 A Yes, sir.

22 Q The questionnaire says, what in the scope
23 -- I think it is question 8 A says what regarding her
24 criminal history?

25 A It's not. Let me see if I can try to find

1 question number 37.

2 Q Try question number 37.

3 A Yes, sir. There is a question that
4 states: "Have you or any member of your family or
5 acquaintance ever been accused in a criminal action?"
6 The answer is "yes," and, then, "if yes, please state
7 the details." I believe it's written in "the blowing
8 off firecrackers on New Years's Eve."

9 Q There is nothing about being charged with
10 a public lewdness or prostitution or theft?

11 A No, sir.

12 Q Going to question 8 A about prior
13 employment history --

14 A Yes, sir.

15 Q -- what does it state in there as a prior
16 employment history?

17 A 8A, "other jobs you have held in the
18 past," also "medical assistant, bar maid."

19 Q So there was nothing in the record about
20 Ms. Collins had ever been a topless dancer?

21 A No, sir.

22 Q Now, do you recall whether you were ever
23 given that information by anybody other than Ms. Kahn
24 or Mr. Schneider or myself -- referred to a voir
25 dire -- were you ever given any information about her

1 criminal history from essentially members of the
2 State?

3 A Not that I recall.

4 Q Were you ever told about that she might
5 have committed the offense of theft by anybody other
6 than Ms. Kahn or myself or Mr. Schneider?

7 A Not that I can recall.

8 Q Is that the kind of information that you
9 would certainly have noted in your files, in your
10 notes?

11 A I believe either I would have recalled
12 that information or that I certainly would have made a
13 notation of that in the process that I use to make my
14 determination as to what my strikes were going to be.

15 MR. CHARLTON: I would like to tender to
16 the State Defendant's Exhibit 20.

17 Q Let me ask you to take a look at that and
18 see if those are your notes taken from Ms. Collins,
19 her voir dire?

20 A Yes, sir.

21 MR. VINSON: We have no objection, Your
22 Honor. I didn't object anyway if he testifies those
23 are his notes, I have no objection to the admission.

24 THE COURT: You move to admit?

25 MR. CHARLTON: Yes, sir.

1 THE COURT: Defendant's 20 is admitted.

2 Q On the page, the second page of those
3 notes, you make a note that you wanted to strike Ms.
4 Collins if at all possible?

5 A Yes, my note is "strike if possible."

6 Q Had you known about her criminal history
7 and the fact that it differed significantly from the
8 questionnaire, would that become a part of your voir
9 dire?

10 A No question about it.

11 Q Would you have moved to strike her, at
12 least, then on the basis that she had misrepresented
13 some of the facts in the context of her voir dire?

14 A I believe that I would have moved to
15 strike her for cause for another reason for two other
16 issues. I can't imagine that I wouldn't also attempt
17 to incorporate that as an additional strike for cause
18 on that particular juror.

19 Q The record reflects that you did not
20 exercise a peremptory challenge once your motion for
21 challenge for cause was overruled. Had you known that
22 she had misrepresented the facts about her prior
23 criminal history, would you have challenged her
24 peremptorily?

25 A Yes, I would. We did our peremptory

1 challenges at the end of voir dire. And I had a chart
2 laid out as to the order of strikes and the people
3 that I was going to strike and the priorities I had
4 for them. I did all my peremptory strikes from it. I
5 asked for additional strikes. The Court gave me two
6 additional strikes. The two alternate persons would
7 have then ended up on the panel that I found them more
8 objectionable than any other person on the panel. And
9 I would certainly have used a peremptory strike on
10 this juror had I known that there was an incorrect
11 statement of the manner that there is in the juror
12 questionnaire.

13 Q In other words, she would have moved up on
14 your strike list and she would have been one of those
15 that would have gone for certain if you knew she
16 didn't --

17 A I do a number system from A to F. I
18 believe she had gone up to either a D plus or a C
19 minus and I think she would have gone down to F and I
20 would have struck her. I don't believe -- I'm
21 positive that I would have.

22 Q I want to ask you also about question
23 number 40 in Defendant's 3, if you would take a look
24 at question number 40.

25 A Yes.

1 Q That question asked whether they or any
2 other member of the family have ever been accused of a
3 crime, I believe.

4 A Well, it's a series of questions. Yes,
5 sir.

6 Q And what was Ms. Collins' response to
7 whether she had been accused of a crime?

8 A It actually says, 39 says, "Have you or
9 any other member of your family or friend ever been a
10 victim of a crime? That's "yes."

11 Then the next, "Have you or any member of
12 your family, or acquaintance, ever been arrested?"
13 The answer is, "yes, driving without a license."

14 40A, "Are you presently under indictment
15 or legal accusation for a misdemeanor or felony?" The
16 answer is "no."

17 40B, "Are you currently on felony deferred
18 adjudication or probation?" The answer is "no."

19 Q But to the question "had she ever been
20 arrested," the only thing in response "to driving
21 without a license"?

22 A Yes.

23 Q The question 68, could you direct your
24 attention to that, please.

25 A Yes, sir.

1 Q Would you please recite into the record
2 Ms. Collins' response to the question: "Do you think
3 there is a crime problem? And if yes, explain."
4 Would you give a response?

5 A She checked "yes." The answer is "people
6 have lost morality. It's easier to steal, take than
7 to work for it. Seems to be the latest thing."

8 Q Does a person who would give that kind of
9 response and been charged and on deferred adjudication
10 for public lewdness in a topless bar and an offense of
11 prostitution and being charged with the offense of
12 theft, does that suggest a certain amount of
13 hypocrisy?

14 A Raised certain questions in my mind.

15 THE COURT: What does that got to do with
16 it?

17 MR. CHARLTON: It concerns more the
18 intelligent use of peremptory challenges and the fact
19 that she mislead the defense counsel about herself for
20 the intelligent use for the peremptory challenges and
21 both these were all areas that would have been
22 explored by him during the course of voir dire.

23 THE COURT: Very well.

24 Q (Mr. Charlton) Let me also ask you
25 about -- let's move to a different subject about the

1 motions you filed regarding specifically extraneous
2 offenses.

3 Did you seek notice from the State for the
4 extraneous offenses that they planned to introduce?

5 A I did.

6 Q Did you seek formal notice of extraneous
7 offenses if they planned to introduce at the
8 punishment phase as well?

9 A I did.

10 Q The record reflects that the Judge agreed
11 with you and gave certain deadlines when the State was
12 to comply with?

13 A Yes, sir.

14 Q Do you recall what those deadlines were?

15 A My recollect is that 15 days prior to
16 trial, and that being the testimony part of the trial,
17 I was to receive any notice of any extraneous offenses
18 that the State was to offer in the punishment stage of
19 trial.

20 MR. CHARLTON: May I approach?

21 THE COURT: Yes.

22 Q Let me show you pages seven and eight of
23 Defendant's Exhibit 9, which is the Court's ruling on
24 the pre-trial motions.

25 A Yes, sir.

1 Q Would you read the top bottom of seven and
2 top of eight?

3 A Yes.

4 Q So was it clear to you, in your mind, was
5 the Judge's ruling emphatic?

6 A Yes, sir.

7 Q Did you rely on that ruling?

8 A Yes, sir. I got a copy of the transcript
9 and very clearly had this in my mind that they were
10 under a Court order to give me -- I believe actually
11 says -- "at least no later than 15 days."

12 Q Did you have conversations with your
13 investigator and your staff about further
14 investigations to be done in light of the Judge's
15 ruling?

16 A Yes, sir.

17 Q Did you specifically discuss investigation
18 of extraneous offenses?

19 A Yes, sir.

20 Q What did you tell your staff and your
21 investigator about that?

22 A I received the okay from the Judge to
23 receive funds for an investigator shortly before the
24 voir dire was to start. Recognizing that the voir
25 dire process, although it takes some time, is not

1 going to be that much time, I instructed my
2 investigator and my staff to concentrate on the
3 guilt-innocence stage of the investigation because I
4 knew that was of the utmost importance. Once the 15
5 day period came by, then I instructed them not to
6 worry about the extraneous offense at all; that we had
7 not received notice and that to concentrate on certain
8 leads that we had on the case in chief.

9 Q So relying on the Court's ruling then, you
10 chose not to investigate extraneous offenses?

11 A Yes, sir.

12 Q Because you had determined, based on the
13 ruling, they were not coming in evidence?

14 A Yes, sir.

15 Q After you learned of the State's intent
16 to -- I believe, on August 13, '97 - the intent to
17 introduce extraneous offenses, did you ask the Court
18 for a continuance to investigate that issue?

19 A Yes, sir. I filed two motions. I filed a
20 motion to preclude the admissibility of that evidence
21 or, in the alternative, a motion for continuance so
22 that I could investigate those matters.

23 Q In the context of that motion, you
24 informed the Court that you could not develop either
25 the resources of time or money at that late date to

1 investigate any extraneous offenses?

2 A I'm sure I did.

3 Q Do you remember a witness named Balderas?

4 A I do.

5 Q Was Mr. Balderas a witness in the context
6 of an extraneous offenses offered at the punishment
7 phase?

8 A He was.

9 MR. CHARLTON: May I approach again, Your
10 Honor?

11 THE COURT: Certainly.

12 Q Let me show you what has been admitted as
13 Defendant's Exhibit 15.

14 A Yes, sir.

15 Q It reflects, does it not, a charge, a
16 felony charge, of a possession more than fifty pounds
17 of marijuana but less than two thousand pounds of
18 marijuana by Mr. Balderas?

19 A Yes, sir.

20 Q What do those documents reflect the
21 disposition on that case?

22 A It was nolle on May 9, '97.

23 Q Are these the kinds of facts that you try
24 to investigate about witnesses who will testify
25 against your client?

1 A Absolutely.

2 Q And why do you investigate them?

3 A Well, I believe the legal statement is
4 that it shows motive to testify in a particular
5 manner.

6 Q In Harris County, the charge of that much
7 marijuana is a serious charge, is it not?

8 A Yes, sir.

9 Q Does it frequently carry rather extended
10 lengths in the penitentiary as a punishment?

11 A You bet.

12 Q So if this is something that had you known
13 about and investigated it, you clearly would have used
14 it?

15 A Yes, sir.

16 Q If you will look at the pre-trial
17 interview of Mr. Balderas, which I think is pages
18 three and four of Defendant's Exhibit 15, do you see
19 where Mr. Balderas reflects his prior criminal
20 history? Does he reflect that Mr. Balderas had an
21 additional criminal history?

22 A On the charge information, yes, sir.

23 Q What are those offenses?

24 A Possession of marijuana in the 1970s. He
25 was fined for it. I assume that would be a

1 misdemeanor charge.

2 Q Anything else?

3 A It's showing the misdemeanor convictions
4 for -- I don't see -- here we go. Aggravated
5 possession -- no, it's this cause number. Right now I
6 don't see any breakdown under what those four
7 misdemeanor convictions would be.

8 Q So there is at least four offenses out
9 there which would have been investigated had you known
10 that Mr. Balderas would likely to testify?

11 A Had we seen this piece of evidence, we
12 would look in the four misdemeanor convictions on this
13 individual.

14 MR. CHARLTON: May I have just a moment?

15 Q Did the prosecution in this case ever give
16 you any information on Defendant's Exhibit 15?

17 A I don't know. I did not review my notes
18 as to what the witness said from the witness stand.
19 He may have during his testimony acknowledged some of
20 these offenses. I don't recall that. But I know that
21 prior to the witness taking the stand that I was
22 unaware of any priors as to this witness.

23 Q So even when they gave you notice of
24 intent, you did not get that information from the
25 prosecution?

1 A No.

2 Q Back to the question about the jury
3 questionnaires, did you intend for those jury
4 questionnaires when you submitted to the Court for its
5 approval for submission to the jury voir nireman, did
6 you intend for those questionnaires to elicit the kind
7 of evidence that you have heard today about Ms.
8 Collins?

9 A Yes.

10 Q Did you rely on it?

11 A Yes. We had a discussion at one point as
12 to whether they were under oath, and it was my
13 understanding that they were under oath. And I very
14 much relied upon that.

15 Q Did you ever get from the State of Texas,
16 from Mr. Vinson or Mr. Smyth, a printout of Ms.
17 Collins' prior criminal history?

18 A Not that I recall.

19 MR. CHARLTON: Pass the witness, Judge.

20 THE COURT: For the State, who is it?

21

22 EXAMINATION

23 BY MR. VINSON:

24 Q Mr. Odom, I think you have already
25 testified that you have worked as a criminal lawyer

1 for 23 years?

2 A Yes, sir.

3 Q Having both experience as a briefing
4 attorney and --

5 A Yes, sir.

6 Q -- as a prosecutor with the Harris County
7 District Attorney's Office?

8 A Yes, sir.

9 Q And what level were you when you left the
10 D.A.'s office?

11 A I had moved from a felony court over into
12 special crimes.

13 Q Okay. And what level had you achieved at
14 that time?

15 A I was the chief of consumer fraud.

16 Q And you also worked in special crimes?

17 A I think at that time special crimes was
18 part of consumer fraud.

19 Q Then you worked at the US Attorney's
20 Office; is that correct?

21 A Yes, sir.

22 Q And what level of cases did you handle?

23 A I handled public cases and white collar
24 crime and criminal type of work as well.

25 Q You have been in private practice for

1 about --

2 A 13 years, whatever the differences.

3 Q And I didn't hear the answer. Are you
4 board certified?

5 A No, I have never taken the courses.

6 Q Well, even without being board certified,
7 you do have extensive background as a criminal defense
8 attorney?

9 A Yes, sir.

10 Q And you also have a background both as a
11 state prosecutor and a federal prosecutor?

12 A Yes, sir.

13 Q Now, during the voir dire -- if you will
14 look at Ms. Collins' questionnaire -- she made mention
15 of the fact that she worked as a bar maid at some
16 point in time?

17 A Yes, sir.

18 Q Based on your training and experience,
19 people that work in bars from time to time get in
20 trouble?

21 A Yes, sir.

22 Q You even represented them?

23 A Right.

24 Q And they have been charged with
25 prostitution before, have they not?

1 A I'm not sure that's the case.

2 Q Not sure that's the case -- you have
3 represented people in that capacity, haven't you?

4 A It sort of depends on how the bar maid is
5 employed.

6 Q Have you represented people who work in
7 bars being charged with prostitution, yes or no?

8 A Oh, definitely.

9 Q Certainly. And when you are representing
10 them, they are not that bad, are they?

11 A It all depends on the person.

12 Q You have represented them. They are not
13 that bad?

14 A No. Sometimes the ones I represent are
15 very bad is the answer to your question.

16 Q You have answered it.

17 And then you went on to look at Ms.
18 Collins' questionnaire with respect to question number
19 37 and it said: "Have you, any member of your family,
20 or any acquaintance, ever been accused in any criminal
21 action?" And she said "yes."

22 A Yes, sir.

23 Q That's a truthful statement, yes?

24 A Yes, sir.

25 Q But the question said, "have you, any

1 member of your family, or any acquaintance, ever been
2 accused." You didn't ask her anything about that, did
3 you?

4 A No, I don't believe I did. I don't recall
5 if I did but I don't think I did.

6 Q Because your notes are up there, right?

7 A Yes, sir.

8 Q And when you were voir diring her, you had
9 an opportunity to ask about question 37, right?

10 A Yes, sir.

11 Q And then, also, having the experience,
12 having represented people who work in bars before,
13 something of that nature, then that could click in
14 your mind just maybe and then you could have gone
15 ahead and asked any question you chose to ask?

16 A No question about it, I could have asked
17 any question the Court would have allowed me to ask.

18 Q And that's a permissible question?

19 A I believe so.

20 Q You know so.

21 A I believe so, yeah. It ought to be.

22 Q Number 39, "Have you, or any member of
23 your family, or friend ever been a victim of a
24 crime?" "Yes." And that was a honest question,
25 right?

1 A I think so.

2 Q Number 40, "Have you, any member of your
3 family, or any acquaintance, ever been arrested?" She
4 said "yes."

5 A That's right.

6 Q "Driving without a license"?

7 A Yes, sir.

8 Q And you had an opportunity to explore that
9 further, did you not?

10 A Sure.

11 Q Nobody cut you off, correct?

12 A Not in regards to that question, no.

13 Q You didn't even ask if Ms. Collins had, in
14 fact, been arrested for DLS, did you?

15 A I don't know.

16 Q Check your notes.

17 A Everything I asked is not in my notes, Mr.
18 Vinson.

19 Q You can't say anybody prevented you from
20 doing that, can you?

21 A No, no one prevented me from doing it.

22 Q You didn't ask Ms. Collins if it was a
23 member of her family who had been arrested for DLS?

24 A No, sir. I don't know if I did. It's not
25 reflected in my notes.

1 Q But what I am saying, those are areas a
2 person with your experience and training could have
3 explored, if you chose to do so?

4 A Absolutely.

5 Q "Are you presently under indictment or
6 legal accusation for a misdemeanor or a felony?"

7 Question number 40A.

8 A Yes, sir.

9 Q She said "no"?

10 A Yes, sir.

11 Q Are you, you know, you are speaking
12 specifically to her?

13 A Yes, sir.

14 Q And she was telling the truth, wasn't she?

15 A I assume so.

16 Q You don't have to assume. You have an
17 investigator out looking at this case.

18 A I haven't had an investigator looking at
19 this case. I'm just relying on what I am being told
20 and shown this morning.

21 Q Well, to your knowledge, there's been
22 nothing to make you disbelieve that, have you?

23 A I have heard nothing to indicate
24 otherwise.

25 Q Number 40B, "Are you currently on felony

1 deferred adjudication or probation?" Any question
2 about that? She answered "no."

3 A Right.

4 Q That's a truthful statement, is it?

5 A I don't know. I assume so. No one has
6 told me otherwise, if that's what you are asking. I
7 have not done any investigation. I don't know. I'm
8 just answering what I have been told. No one has told
9 me of it.

10 Q I don't mean to put you -- you had a
11 chance to look at the documents that were offered into
12 evidence today; was that correct?

13 A I have not seen some of these documents
14 before but most of these documents are documents that
15 I filed -- some of these I am seeing for the first
16 time this morning.

17 Q But if she was under felony indictment or
18 on deferred adjudication --

19 A I have seen none of those documents.

20 Q But if she was under felony indictment or
21 deferred probation or any form of probation, both
22 attorneys would have presented such to the Judge
23 today, correct?

24 A I assume they would have.

25 Q They are trained?

1 A I assume that you would have discovered
2 that before we ever --

3 Q We will get to that.

4 A -- got to that point.

5 Q But what I am saying, right here, the
6 question that Ms. Collins answered, she did not lie,
7 did she?

8 A Well, you only asked half of the question.

9 Q Well, she answered. Just a minute. You
10 had a chance to explore every question, correct?

11 A Yes. I had a chance to go over every
12 question in the questionnaire and ask it again.

13 Q That's what we have the questionnaire for;
14 isn't that right?

15 A That's not my understanding.

16 Q Let me see if you agree with this.

17 The questionnaire is to give us like a
18 snapshot picture of this person and the person's
19 family perhaps, some relationship?

20 A One of the things.

21 Q From there, we can begin to probe as
22 lawyers?

23 A That's correct.

24 Q And you have done that on many occasions,
25 have you not?

1 A That's correct.

2 Q And you had an opportunity to do it here,
3 correct?

4 A That's correct.

5 Q So if it was your lack of diligence, you
6 can't blame anyone else for that, can you?

7 A No. It's not a lack of diligence. We
8 have a right to rely on the answers to some of these
9 questions so we don't have to go into matters that
10 there is no necessity for us to go in and you didn't
11 ask some of those questions, such as, "Have you ever
12 been convicted of a crime?" "Yes," and then she gives
13 an explanation of the crime that she is convicted and
14 did not include in that explanation the matters we are
15 talking about now.

16 Based upon that, I think a reasonable
17 person can rely on the fact that what she had been
18 convicted of was blowing off the firecracker, not some
19 other matter that wasn't mentioned.

20 Q Well, how can you draw that conclusion
21 when you don't even know who was charged?

22 A It says, "Have you or any other member of
23 your family ever been arrested?" She answered "yes."
24 "If answered yes, please explain," under that,
25 "blowing off firecrackers." I know then if either

1 she or a member of her family have been arrested for
2 blowing off firecrackers. I also don't know if the
3 answer is answered correctly.

4 Q What is correctly to you?

5 A Correct. "If you have been arrested,
6 please explain." If I had been arrested for several
7 things, I explain what I have been arrested.

8 Q That's the way you think. You can't say a
9 juror, a novice, knows exactly what we as lawyers want
10 them to answer and that's why we speak to them and
11 have the voir dire, correct?

12 A Well, I think that is pretty obvious.

13 Q No, you think it is obvious but they
14 didn't think it is obvious?

15 A That may be a possibility. Any question
16 they might not answer correctly but the purpose of the
17 questionnaire is to keep us, if it's a reasonable
18 question, from going into matters and asking matters
19 that are already answered in the questionnaire.

20 Q And it's also there to trigger questions
21 in our mind if we see something that raises some
22 question?

23 A That's right.

24 Q And you are aware that she had worked as a
25 bar maid?

1 A Yes. I think I made a notation to that.

2 Q Didn't hide that. She didn't have to get
3 up and say she was a dancer. You don't know under
4 what circumstances she may have been charged, do you?

5 A I have no idea.

6 Q Now, on question number 14, it says, "that
7 Ms. Collins lied under oath."

8 A Question 14.

9 Q Yeah, "lied under oath." Question 14,
10 I'm sorry, in the motion.

11 A Oh, I haven't seen the motion.

12 Q Would you like to take a look at that?

13 A Yes.

14 MR. VINSON: May I approach, Your Honor?

15 THE COURT: Sure.

16 Q Number 14 is strong language, "She lied
17 under oath." Now, I know you didn't prepare that
18 motion but would you agree that's strong language,
19 "lied under oath"?

20 A It's strong language.

21 Q Extremely?

22 A I don't know that. It's not inapplicable
23 though --

24 Q Right.

25 A -- but it's strong language.

1 Q Because the question: "Have you ever been
2 convicted" -- and the Judge, when he qualified the
3 jury, has always said, "have you ever been convicted
4 or are you presently charged with theft or under
5 indictment or on probation." A person who received
6 deferred adjudication and is off it, they are not
7 lying, are they?

8 A To the question, "have you ever been
9 convicted" --

10 Q Convicted and that's the question that is
11 put to you, not have you been charged.

12 MR. CHARLTON: Object, first of all, I
13 apologize for interrupting but I object to Mr.
14 Vinson's testimony about what the Court may have
15 recited at certain points. And if he wants to take
16 the stand about what was actually colloquy or
17 testimony, then fine. That's okay. But I have not
18 seen -- I object to his testifying at this point, and
19 besides he is misrepresenting the questionnaire. The
20 questionnaire says not have you ever been convicted or
21 whether you have been accused of.

22 MR. VINSON: What I am saying, right
23 here --

24 MR. CHARLTON: -- question number 37.

25 MR. VINSON: -- would reflect to what they

1 say here, "Ms. Collins lied under oath." Under whose
2 oath?

3 MR. CHARLTON: Well, you know, object to
4 the use of documents that he did not prepare in cross
5 examination. I mean, what we as Mr. Dennes' lawyers
6 now have said has nothing to do with the testimony at
7 trial. He did not make those statements.

8 MR. VINSON: I understand that, Your
9 Honor. But what I am saying, I am asking him, does he
10 agree with that and I am entitled to do that.

11 THE COURT: Okay. Couch it in those
12 terms.

13 Q (Mr. Vinson) Do you agree with "she lied
14 under oath" that these lawyers over here say?

15 A I don't know for sure what her record is.
16 Assuming that there is more of a record than what is
17 in this jury questionnaire, there has been a
18 misrepresentation in the juror questionnaire. Now,
19 whether you want to use the word "lie" or I want to
20 use the word "misrepresent," I think the questionnaire
21 is pretty clear that you are to tell if you have had
22 any arrests or any run-ins with the law in a number of
23 different questions. None of that was included in the
24 questionnaire.

25 Perhaps I would have worded it a little

1 different, I don't know, but I certainly think that
2 the courts have held that failing to make a statement
3 can be as much of a misrepresentation as an outright
4 misrepresentation that is verbalized.

5 THE COURT: Has there been a determination
6 if the questionnaire was given under oath?

7 MR. CHARLTON: The last statement suggests
8 that they have affirmed that everything is true and
9 correct.

10 THE COURT: Well, that's not under oath.

11 MR. VINSON: I am objecting to him --

12 THE COURT: Excuse me, gentlemen, we are
13 not going to get out of hand. Let's have one talking
14 at a time.

15 Mr. Charlton, I'm just asking was this
16 sworn to.

17 MR. CHARLTON: Yes, Your Honor. The last
18 statement on page 19 of the questionnaire, signed by
19 Ms. Collins, "I hereby swear to the responses and
20 information provided herein are true and correct."

21 THE COURT: Okay. Who did she give that
22 affirmation to?

23 MR. CHARLTON: That I cannot answer. The
24 only thing I can address to, that is, when you to go
25 the jury assembly room -- my memory of the jury

1 assembly room -- that somebody puts you under oath.

2 MR. VINSON: Object to him testifying.

3 THE COURT: That's all right.

4 MR. CHARLTON: That some Judge over in the
5 jury assembly room puts you under oath about the
6 questions and answers you are supposed to give.

7 THE COURT: You don't know for certain
8 that happened in this case?

9 MR. CHARLTON: No, sir.

10 THE COURT: Okay. There is really a
11 question as to whether this was sworn under oath to
12 someone or not or whether or not it was just based on
13 the representations that she swears to.

14 MR. CHARLTON: The only thing that Mr.
15 Schnieder points out to you, and I don't know what
16 your procedure on that, I will have to testify I don't
17 know whether you tell the jurors when you put them
18 under oath and say they have to give true and correct
19 answers.

20 THE COURT: When they start their voir
21 dire.

22 I'm sorry, Mr. Vinson, please proceed.

23 Q (Mr. Vinson) And you do understand what
24 deferred adjudication is, correct?

25 A Yes, sir.

1 Q And once a person has served their
2 deferred adjudication and has been charged by the
3 Court, under state law, there is no conviction?

4 A Yes, sir.

5 Q Now, Mr. Odom, you appeared with Mr.
6 Dennes, Reinaldo Dennes, in the initial cause and that
7 was in Cause No. 715,325 for the offense of capital
8 murder. The case was filed on February 24, 1996. And
9 you made your first Court appearance with him on
10 February 26, 1996, correct?

11 A If you are looking at the docket sheet and
12 that's what it reflects, I will agree with that. I
13 have no independent recollection of that.

14 Q Would you like to look at the docket
15 sheet?

16 A I'll take your word for it, Mr. Vinson.

17 Q It showed that you appeared with him as
18 counsel on February 26, 1996, and from that date on,
19 you appeared with him; is that correct?

20 A Yes, sir. I was his attorney from that
21 date on.

22 Q And shortly after appearing with the
23 defendant, you approached, I think, Mr. Rosenthal and
24 you also approached myself as well as along with the
25 attorney George Parnham, who practices here in Harris

1 County, Texas, who was representing Alberto Dennes.

2 You all both appeared wondering if the State was going
3 to seek the death sentence?

4 A I didn't understand that.

5 Q You and Mr. Parnham both spoke to Mr.
6 Rosenthal early on in this trial --

7 A Yes, sir.

8 Q -- early on in the capital case and you
9 wanted to know if the State was going to seek the
10 death sentence?

11 A That's correct.

12 Q And from time to time you would speak and
13 ask about the extraneous; is that correct?

14 A That is true.

15 Q During that time, I think, Mr. Rosenthal
16 made you aware that there was a home invasion that he
17 was looking into; isn't that correct?

18 A He said that there was the possibility of
19 a home invasion. Yes, sir.

20 Q Because nobody was really certain at that
21 time?

22 A That's right.

23 Q And I think from time to time you had met
24 and spoke with me. I said, "We will check with Chuck
25 because I still think he is trying to develop a home

1 invasion where your client was involved"?

2 A Something to that effect, yes, sir.

3 Q So you were aware, you had in the back of
4 your mind -- and you again having experience -- that
5 the State was out there trying to find something?

6 A I was concerned about the possibility of
7 an extraneous offense.

8 Q Correct. And the State was trying to find
9 something.

10 Now, are you saying at this time because
11 we had not developed it within the time constraint His
12 Honor gave us, that you washed it off at that time?

13 A I think the evidence showed you developed
14 it, well, prior to the time that I received notice.
15 But what I am saying is that once the Court made its
16 ruling and once I didn't receive notice within those
17 15 days of the ruling at that point I relied on the
18 ruling that the extraneous weren't coming in because I
19 didn't get notice.

20 Q So what I am saying, you just went into
21 the trial assuming that there was not going to be any
22 extraneous against your client?

23 A Not on punishment. I think you gave me an
24 extraneous on the case in chief. Yes, sir, at that
25 point in time I believed that you had failed to

1 properly comply with the Court's orders and that
2 extraneous wouldn't come in.

3 MR. VINSON: May I approach, Your Honor?

4 THE COURT: Certainly.

5 Q It says here that we are supposed to make
6 that two weeks prior to trial.

7 A Yes, sir. I believe the next page says,
8 "no less than 15 days."

9 Q It goes to 15 days?

10 A Right.

11 Q But nowhere did His Honor say that if it's
12 not produced within 15 days prior to trial, it was not
13 coming in at all? Nowhere were you led to believe
14 that, were you?

15 A I was lead to believe that, yes, sir. He
16 didn't say those words. He said that the State had to
17 give me that notice within 15 days. The implication:
18 If they didn't, then the State doesn't comply with the
19 order and it doesn't come in. That's the way the
20 Criminal Procedure Code reads in the extraneous
21 offense itself.

22 Q We started voir dire. Do you recall the
23 date we started?

24 A You would have to refresh my memory on
25 that.

1 Q Would you agree with me that, after the
2 jury was selected, we did have an adequate break
3 between the time the jury was selected and the time
4 that we actually started evidence? We had about a
5 week's break; is that correct?

6 A I think you are right. I think we
7 finished our jury selection on a Monday, or something
8 like that, and then we started the actual trial the
9 following Monday.

10 Q So that was well within seven working days
11 that we had, I mean, at least five days and the
12 weekend but the Court gave us a break?

13 A There was a break. Yes, sir.

14 Q And then we started the trial testimony --
15 we started on August 18th; is that correct?

16 A I will have to take your word for it but
17 that sounds about right.

18 Q And I think the trial lasted, just the
19 guilt stage alone, some nine days?

20 A That sounds about right.

21 Q We didn't start punishment evidence on
22 your client's case until the 2nd day of
23 September, 1997, correct?

24 A I'll have to rely on you for those dates
25 but that sounds about right.

1 Q And we filed a subpoena on
2 August 18, 1997; is that correct?

3 A I don't have any idea.

4 Q The subpoena was filed on August 13, 1997;
5 is that correct?

6 A I don't know, Mr. Vinson.

7 Q Would you agree?

8 A You would have to show me.

9 Q What date was the subpoena filed?

10 A It's highlighted "August 18, 1997."

11 Q No, look at the bottom.

12 A When it is filed, "August 14, '97."

13 Q That's August 13, '97?

14 A You said 14th, didn't you? It says filed
15 here "August 14th."

16 Q What does that say?

17 A The clerk stamp marked "August 14th." It
18 is filled out on August 13th. I don't know which date
19 is controlling.

20 Q Okay. And we gave you a copy right in
21 Judge's chamber, I think, or the jury room -- one of
22 them -- we gave you a copy of this before we even
23 started evidence?

24 A There was a day -- I don't know which one
25 it is -- in one of the motions you and I sat down

1 prior to trial, during that week we were preparing for
2 trial, where you informed me of the home invasion
3 extraneous offense. And at that time I was aware of
4 the witness.

5 Q And, in fact, I even came to your office,
6 I think, the Friday before trial, wasn't it, and
7 delivered?

8 A I don't recall that but you may have.

9 Q My investigator took me there and I
10 delivered it to your office. You were not in.

11 A Now that you mention, I remember something
12 to that fact.

13 Q And so during -- and we only had, just so
14 the record can be clear, we finished August 11th with
15 the jury selection, and we didn't start evidence until
16 August 18th. And in the meantime you had been given
17 the information on the extraneous?

18 A Not on the 11th. I was given the
19 information sometime during that week we were
20 preparing for trial. I want to say -- I don't
21 remember exactly. I want to say it was a Thursday,
22 and we were supposed to start testimony that following
23 Monday.

24 Q But you were given that information,
25 correct?

1 A Sometime during that -- towards the end of
2 that week, as I recall.

3 Q Right before testimony started?

4 A Yes, sir.

5 Q And then you still had an investigator on
6 hand, right?

7 A I had my investigator. Yes, sir.

8 Q We put the addresses of all the witnesses
9 there, correct?

10 A I think so.

11 Q Well, that's --

12 A It's on the subpoena. It was certainly
13 there.

14 Q And those were the witnesses we called to
15 the witness stand, correct?

16 A As I recall, I don't know.

17 Q And during the time we were in trial, I
18 think we got the case to the jury and, then, after we
19 completed that, I think there was another break in the
20 trial?

21 A I don't remember that. There might have
22 been. There was a break because my wife was in the
23 hospital, as I recall.

24 Q We are not blaming you for anything but
25 there was a break in the trial, correct?

1 A I recall there was some sort of break.

2 Yes, sir.

3 Q In fact, the verdict came in on the 28th
4 of August, correct?

5 A I don't recall, but I will take your word.

6 Q And we were supposed to start that Friday
7 but the Judge saw fit to allow you some extra time
8 because of the illness?

9 A Right.

10 Q And then we started on the 2nd because
11 Monday was Labor Day. September 1st was Labor Day and
12 we started right after Labor Day on punishment?

13 A I believe so.

14 Q And all these people, they are local
15 people. They live right here in Houston, Texas. I
16 mean, just a good spit from the courthouse you may
17 say, right?

18 A I don't know.

19 Q Right here on Porter, Cambridge Streets in
20 Houston and then two HPD officers?

21 A I don't know where Porter Street or
22 Cambridge Street is.

23 Q I understand. Right here in the city?

24 A Sounds like it is in the city of Houston.

25 Q And I think you sent an investigator all

1 the way to Florida; is that right?

2 A Yes, sir, I did.

3 Q And, obviously, if he can go all the way,
4 find a bank down there, he can properly locate these
5 streets in this county?

6 A I assume that he certainly could
7 investigate and try to locate those streets.

8 Q You had access to this subpoena?

9 A Yes, sir.

10 Q You had a copy of it and you were aware,
11 correct?

12 A I was aware that you put me on notice of
13 the extraneous offense. We had a little hearing back
14 in the Judge's area. My understanding was that, based
15 upon the 15 day transcript, which I showed him that,
16 this information wasn't coming in. But, yes, I could
17 have. Had I thought it was coming in, I could have
18 done investigation and I could have discovered his
19 priors and this other information.

20 Q We also gave you the offense report on
21 this case, correct?

22 A You gave me an offense report as to the
23 victims. There was nothing that related to my client
24 in the offense report.

25 Q But, I mean, you were aware of the

1 allegation?

2 A I was aware of the allegation that there
3 was a home invasion. Nothing in that offense
4 report -- at that time it was an early on report
5 indicated --

6 Q You saw the entire report because there
7 was nothing ever connecting your client to it?

8 A That's right. The offense report did
9 little, if any, good in regards to the punishment
10 stage because that was developed at a later time.

11 Q And you also remember that we were trying
12 to get a Cuban national to come back here and testify
13 against your client? You were aware of that, right?

14 A It may have been. I remember there was
15 another witness. I didn't know it was a Cuban
16 national. It couldn't have --

17 Q But you do know?

18 A I do know there was a second witness and
19 something about a second witness. I thought something
20 to do with someone coming in from the penitentiary or
21 something.

22 Q Right. As an experienced defense
23 attorney, you are always on alert for extraneous,
24 aren't you?

25 A You should be.

1 Q And you never close down. And when you
2 voir dire a jury, you voir dire with that potential;
3 isn't that correct?

4 A Unless the Judge has ruled otherwise.

5 Q The Judge didn't make a final ruling?

6 A Obviously but I was under the impression
7 based upon the previous ruling.

8 Q This wasn't an impression the Judge gave
9 you?

10 A I believe it was the impression the Judge
11 gave me.

12 Q That was one that you drew from your own
13 conclusion because you do recall the Judge saying that
14 he would make a final ruling at a later time. There
15 was an argument over that.

16 A I recalled -- we are talking about two
17 different hearings here. There was one hearing
18 wherein there was no question in my mind but that I
19 was to receive 15 days notice. And there was another
20 hearing wherein the Judge looked at the 15 day notice,
21 said, "Well, I don't think it is coming in." And you
22 are right. There was no absolute ruling on his part
23 that it wasn't coming in at that time.

24 Q You are not claiming surprise, are you?
25 You weren't surprised?

1 A I was surprised.

2 Q How could you be surprised when you knew
3 the possibility of something out there?

4 A Because I thought that the Court's ruling
5 was going to preclude that testimony from coming in.

6 Q You couldn't see a possible --

7 A It may be my fault for doing that but, in
8 all honesty, yes, it's a possibility but I thought the
9 Court's ruling would prevent that testimony from
10 coming in.

11 Q You had no perception in your mind that if
12 something is discovered and matures into something
13 that we can present it to the Court. It just may give
14 us a break to allow the State to develop it along with
15 you. You never even perceived that?

16 A Well, it's not that I didn't perceive
17 that. It is just I was pretty much convinced that
18 this wasn't developing on your part. I believed that
19 from what little I did know you had this information
20 long before the 15 days and that, as such, you were
21 obliged to give that information to me. And you
22 didn't and that, therefore, the law would allow that
23 to stay out of evidence. Obviously, that was an
24 incorrect impression but that's what I was thinking.

25 Q And you had talked to Mr. Rosenthal

1 before, correct?

2 A That's right.

3 Q And he kind of put you on notice that he
4 was trying to find somebody to tie your client to that
5 home invasion?

6 A I don't know if it was trying to find
7 somebody, more in a sense of trying to make it.

8 Q Okay. And you knew that back in '96,
9 correct?

10 A I assume so. It's early on in the case.

11 Q Okay. Along with the defendant's
12 brother's attorney, you all were both aware of that,
13 correct?

14 A I believe Mr. Parnham was aware as well.

15 Q Now, you remember when we had the jury
16 selection, when we had the pool here, that was the 2nd
17 day of September when we got ready to start trial?

18 A Yes, sir.

19 Q And I think Ms. Collins, she was in that
20 jury pool, she was about number six selected.

21 A I would have to look at my chart but I'll
22 take your word for it.

23 MR. VINSON: May I approach?

24 THE COURT: You may.

25 Q See.

1 A Yes, sir.

2 Q Now, by the time we got to the 16th juror,
3 Ms. Collins, you weren't out of strikes, were you?

4 A No.

5 Q In fact, you hadn't even asked for a
6 peremptory strike at that time?

7 A I had asked for.

8 Q You hadn't asked for an additional by the
9 time we got to Ms. Collins?

10 A No, no. I was making strikes.

11 Q You still had plenty of strikes?

12 A Because of the way we did it, saved all of
13 our strikes until the end and I had seen the people
14 that --

15 Q What I am saying, just listen to me, and
16 answer my question.

17 A Yes. I still had peremptories by the time
18 I got to Ms. Collins.

19 Q I think you had exercised just about five
20 strikes at that time?

21 A I'll take your word for it.

22 Q So you still had plenty of strikes?

23 A I could have struck Ms. Collins. Yes,
24 sir.

25 Q And in fact --

1 MR. VINSON: May I approach, Your Honor?

2 THE COURT: Sure.

3 Q According to your notes, you didn't care
4 for Ms. Collins too much, did you?

5 A No. She was on the lower end of the
6 jurors that I wanted.

7 Q Okay. But you said "strike if possible"?

8 A Yes, sir.

9 Q Now, it was possible to strike her; isn't
10 that right?

11 A Only by getting someone less desirable
12 later on.

13 Q Well, His Honor told you up front that if
14 you run out of strikes and you need some more, he
15 would consider?

16 A He would consider it. Yes.

17 Q He would consider it. He never told you
18 if you run out of strikes, you are on your own. He
19 told you that he would consider some additional
20 strikes for you?

21 A When that time came, he would consider.
22 He didn't tell me get.

23 Q He would consider it?

24 A He said he would consider it.

25 Q He said he was going to consider them

1 based on your experience, just about to get them,
2 don't you?

3 A A reasonable possibility, yes.

4 Q And you don't know and the Judge can't
5 make that decision until you run out of strikes?

6 A That's right.

7 Q Because that would be improper for him to
8 try to sit there and anticipate your needs?

9 A Right.

10 Q After you run out of strikes, then you
11 looked to the Court and the Judge in this case, Judge
12 Wallace --

13 A That's correct.

14 Q -- gave you additional strikes and he
15 gave --

16 A He gave me two additional strikes.

17 Q You didn't use them?

18 A No, because the people I would have gotten
19 using those would have been worse.

20 Q The question is: You didn't use them?

21 A No, I didn't.

22 Q And you had plenty of strikes left when
23 you failed to strike Ms. Collins?

24 A Well, that's a relative term. I had
25 plenty of strikes left but I had people, as I keep

1 saying, that were less desirable in my mind than Ms.
2 Collins that those strikes were reserved for, so I
3 only had plenty of strikes left in the sense of
4 numbers. I didn't have plenty of numbers left in the
5 sense of striking and using my peremptories in an
6 intelligent manner.

7 Q Do you have the rest of your notes with
8 you so we can take a look at those?

9 A I don't have them with me.

10 Q Okay. Do the attorneys?

11 A I have no idea.

12 MR. VINSON: Do you have the rest of his
13 notes?

14 MR. CHARLTON: No, we do not.

15 MR. VINSON: We would like to see them.

16 MR. CHARLTON: Privileged. You can
17 subpoena them, if you wish.

18 Q Well, let's say it was possible, correct?

19 A Not in the sense of exercise.

20 Q It was --

21 A If you want me to answer the question.

22 THE COURT: Let him finish.

23 A It's only possible to achieve a less
24 desirable result based on information I had. That's
25 what that meant. It didn't mean if physically

1 possible, I had to spend a strike. Those are Fs. As
2 you can see, that was a D minus. What that means, in
3 my note taking, was that if there is a -- if there is
4 not a more undesirable juror somewhere, then I use a
5 strike. If there is a more undesirable juror, I don't
6 use a strike. That's what that note means, not if it
7 is physically possible to use a strike.

8 Q You say there is a D minus, correct?

9 A That's what at that time she was. I did
10 another chart prior to doing my final strikes and I
11 think she moved up at that point from a D minus, I
12 believe, to D plus.

13 Q Did you get rid of the D minuses with the
14 rest of your strikes?

15 A Most of them I either did or I seriously
16 thought about it. I ended up with, I believe, at
17 least two Ds, I don't know, D minuses or D pluses,
18 like she may have changed.

19 Q You didn't exhaust the 15 strikes you were
20 given, did you?

21 A I exhausted all the strikes until I got to
22 the two peremptory, to the additional ones. I
23 exhausted all my strikes and I was given two more but
24 at that time the people I would have received, had I
25 used those two strikes, would have been less desirable

1 than the people if I would have not used those two
2 strikes, so by the time I got my two strikes, I had
3 like six jurors left so the two strikes, the two
4 additional strikes that the Court granted me, did me
5 no good at that point.

6 Q Okay. You had only used five strikes when
7 you got there and you had ten left?

8 A I don't know. If that's what the record
9 reflect, then, yes. I don't have those records.

10 Q That's what the record reflects.

11 And you got two additional strikes and you
12 never --

13 A But I got the two additional strikes way
14 on down the line. I mean, we had already passed over
15 this one at that point.

16 Q But yeah, then you heard us stand there
17 and say, "We accept Ms. Collins," and at that time
18 you, as an experienced attorney, knew at that time you
19 had to do one of two things: You had to accept Ms.
20 Collins or exercise a strike?

21 A That's correct.

22 Q Every criminal defense lawyer practicing
23 in this state knows that; isn't that right?

24 A Absolutely.

25 Q And you chose to accept Ms. Collins?

1 A Based upon what I had in the questionnaire
2 and the answers in voir dire, I did.

3 Q And you already had your notes say
4 "strike"?

5 A "If possible".

6 Q And you tried to get her for cause and
7 that failed?

8 A That's right.

9 MR. VINSON: Your Honor, at this time I
10 have no further questions. However, we would like it
11 on the record so we can have a truthful and accurate
12 record of what happened to those other strikes, you
13 know, they have only brought forth this one with Ms.
14 Collins. We would like to see what was the sequence
15 of strikes with respect to the notation of the other
16 jurors. He is alleging that he was forced to take Ms.
17 Collins.

18 THE COURT: I understand from defense
19 counsel they will make that available for you.

20 MR. CHARLTON: I don't want to make that
21 understanding clear. I am not making that
22 representation to anybody we are going to make that
23 available.

24 THE COURT: That's exactly what you said.

25 MR. CHARLTON: I apologize if I misled.

1 THE COURT: Then those notes will become
2 available to the State.

3 MR. VINSON: I have nothing further.

4 THE COURT: Very well. Mr. Charlton.

5

6 EXAMINATION

7 BY MR. CHARLTON:

8 Q Mr. Vinson, in his cross examination, has
9 made a big issue --

10 MR. VINSON: Object to the side bar, "the
11 big issue."

12 Q (Mr. Charlton) I have a motion to
13 discuss the extraneous offense offered at punishment?

14 A Yes.

15 Q Were you all in the discussion with Mr.
16 Rosenthal or Mr. Smyth or any representative from the
17 State ever given any information about Mr. Balderas
18 having a major drug charge dismissed against him three
19 months before he testified?

20 A Unless it came out from his testimony, I
21 was not given that information.

22 Q That's right. You were not told that
23 before trial?

24 A Not to my recollection.

25 MR. CHARLTON: May I approach again, Your

1 Honor?

2 THE COURT: Certainly.

3 Q One other thing first: Do you recall
4 whether people were sworn, whether the voir niremen
5 were sworn?

6 A There was specifically a discussion about
7 that during voir dire when Judge Densen was presiding
8 over that and that issue came up. And it was
9 determined from the clerk that before the jurors came
10 to us individually they had been sworn in by someone
11 from the clerk's office in the general jury room
12 across the street in the jury assembly room on
13 Congress?

14 A Right.

15 THE COURT: Well, let's clear the record
16 up because I swore each individually. When Ms.
17 Collins was here, was I there? Was I there the day
18 Ms. Collins was voir dired?

19 MS. KAHN: It was Judge Densen.

20 THE COURT: Thank you.

21 Q I also call your attention to the
22 transcription hearing, specifically the top of page
23 eight, and ask you to recite that portion that I have
24 underlined that has been underlined for you. Would
25 you recite into the record the Judge's ruling about

1 notice.

2 A "You are under obligation to notify the
3 defense but no later than 15 days."

4 Q That was about as emphatic as I think you
5 can get it?

6 A I certainly believed it was.

7 MR. CHARLTON: May I approach one more
8 time, Your Honor?

9 THE COURT: Certainly.

10 (Whereupon, Defendant's Exhibit No. 21 was
11 marked for identification.)

12 MR. CHARLTON: I will tender to the State
13 Defendant's Exhibit 21, which is the notice of
14 extraneous offenses.

15 THE COURT: Any objection?

16 MR. VINSON: I have no objection.

17 MR. CHARLTON: And also tender to the
18 Defendant's Exhibits Nos. 22 and 23.

19 MR. VINSON: Your Honor, I have no
20 objection to Defendant's Exhibit 21 but to
21 Defendant's Exhibit 22 and 23, I think we have already
22 had testimony on that disclosure of Ms. Collins -- any
23 criminal activities that Ms. Collins may have been
24 involved in. We already have that on the record.

25 THE COURT: I don't know what 22 and 23

1 is.

2 MR. CHARLTON: They are in the affidavits.

3 THE COURT: Affidavits from the --

4 MR. CHARLTON: The defense, Mr. Odom.

5 THE COURT: Not from Ms. Collins?

6 MR. CHARLTON: No, sir.

7 MR. VINSON: Then State's Exhibit 23 --

8 THE COURT: Are these the same affidavits
9 that were offered as part of the motion?

10 MR. CHARLTON: Yes, sir.

11 THE COURT: Defendant's Exhibit 21 is
12 admitted.

13 Q I'll show you what has been marked as
14 Defendant's Exhibit 21?

15 A Yes, sir.

16 Q And is that only notice from the State you
17 ever got about extraneous offenses?

18 A In writing, yes.

19 Q You are a long-standing and well-regarded
20 criminal defense counsel. You are familiar with the
21 holdings about the requirement for notice of
22 extraneous offenses, are you not?

23 A Somewhat, yes, I believe I am.

24 Q And the notice that's required to be in
25 writing?

1 A Well, the notices on the case in chief are
2 required to be in writing. Notices on the punishment
3 stage are somewhat of a gray area of law. I believe
4 the better practice that they be in writing but, like
5 I said, there is some law indicating that doesn't
6 necessarily have to be the case.

7 MR. CHARLTON: Pass the witness.

8 THE COURT: Mr. Vinson.

9

10 EXAMINATION

11 BY MR. VINSON:

12 MR. VINSON: I have a couple of questions.

13 Q Who has your notes?

14 A My filed has been turned over to Mr.
15 Dennes' present attorney.

16 Q So they would have all that. They would
17 have your strike sheet, the one that you made the
18 decision on, and they would have all your notes on the
19 jurors?

20 A I turned all that over to Ms. Kahn.

21 Q Who has it?

22 A I don't know who has it but I turned it
23 all over to Ms. Kahn, Leora Kahn.

24 Q Now, with respect to the notice on
25 extraneous, you are not saying I didn't deliver to

1 your office, I think, on a Thursday or a Friday
2 evening, whatever it was --

3 A I'm not saying.

4 Q -- the notice on the extraneous?

5 A I am saying the only formal written notice
6 I received was there on the case in chief.

7 Q I said written notice.

8 A No, we talked about it earlier. You gave
9 me verbal notice prior to you coming to my office on
10 that day sitting back in the jury room.

11 Q And, also, I came to your office and
12 brought information as well?

13 A I recall you delivering some information
14 to my office. Yes.

15 Q Now, with respect to your inability to, I
16 guess, defend your client, the Court provided the
17 funds for the expert who came here from Dallas?

18 A Yes, sir.

19 Q And that expert had an opportunity to look
20 at the firearms and all the evidence?

21 A Right. The Court authorized payment for
22 those. I put out the funds on that but, yes, sir.

23 THE COURT: Will you let me interrupt.

24 Mr. Parnham has got a call from the
25 federal court that he needs to go to federal court.

1 So any problem with that?

2 MR. CHARLTON: No, sir, I don't believe
3 so. Other than his good looks, we don't need Mr.
4 Parnham.

5 THE COURT: We already had that this
6 morning.

7 Q (Mr. Vinson) And that expert was allowed
8 to testify?

9 A Yes, sir.

10 Q And I think he gave compelling testimony,
11 correct?

12 A I thought so.

13 Q That he was an expert that even if you
14 looked at his credentials, he's a little head and
15 shoulders above our man?

16 A Credential wise, yes.

17 Q And you also had an opportunity and I
18 think His Honor approved funds for your investigator
19 to go to Florida?

20 A I don't know if he approved funds for my
21 investigator to go to Florida but he approved money
22 for me to investigate the case with, which we did.

23 Q Okay. And, also, the Court provided you
24 with funds to get the testimony in on the defendant.
25 I think it was a psychologist?

1 A He approved Dr. Brown.

2 Q Dr. Brown had adequate time to do what he
3 needed to do when he came in here and gave testimony?

4 A Yes, sir.

5 Q And he was a professional about it,
6 correct?

7 A Yes, sir.

8 Q And so that we may end on this note: You
9 were retained on this case, correct?

10 A Yes, sir.

11 Q And in spite of your being retained, the
12 Court still granted funds to assist in Mr. Dennes'
13 defense?

14 A I was retained by the mother and father of
15 Mr. Dennes but, yes. And then in court we had a
16 hearing on indigency of the client, and that's the
17 basis of the investigator, the psychologist and the
18 firearms expert.

19 MR. VINSON: I have no further questions,
20 Your Honor.

21 MR. CHARLTON: We will pass him.

22 THE COURT: Thank you, Mr. Odom. I
23 appreciate it.

24 THE COURT: Mr. Vinson.

25 MR. VINSON: I was asking, Your Honor, if

1 we could ask that Mr. Odom remain until such time we
2 had a chance to look at his list for the other jurors,
3 strike list and the notes that he took on the jurors
4 that he testified that he had to strike and to force
5 him to accept Ms. Collins.

6 THE COURT: Ms. Kahn.

7 MS. KAHN: May I respond, Your Honor,
8 please. As the attorney appointed on the appeal of
9 Mr. Dennes and as the attorney who is suppose to have
10 all this information, I would invoke my client's right
11 to not divulge any of this information regarding other
12 strikes of other jurors. First, on the grounds that
13 they are irrelevant to this hearing; and secondly, it
14 is a violation of work product privilege of the
15 attorney in this case and it has no bearing whatsoever
16 on this issue regarding other jurors.

17 The fact remains that all the notes that
18 were taken by this attorney regarding juror Collins
19 have been turned over to the State for their
20 inspection and for cross examination in this hearing.
21 Any other matters have been admitted into evidence as
22 Defendant's Exhibit 20. The fact remains that any
23 other notes are privileged. They are work product and
24 they are irrelevant to any other jurors. It's a
25 fishing expedition on the part of the State.

1 THE COURT: It's denied. I move that the
2 notes be made available to the State immediately.

3 MS. KAHN: I don't have them here.

4 THE COURT: As soon as you can get them
5 today, provide those to the State.

6 MR. CHARLTON: Do you want to recess the
7 hearing to another day to complete the hearing?

8 THE COURT: No, let's complete all we can
9 do today and come back for more.

10 Let's take about a one or two minute
11 break.)

12 (Recess taken.)

13 MS. KAHN: At this time we rest, Your
14 Honor.

15 THE COURT: What says the State?

16 MR. SMYTH: The State would call Mark
17 Vinson.

18 MR. CHARLTON: We will waive the oath.

19

20

21

22

23

24

25

1 MARK VINSON,
2 was called as a witness for the State and, having been
3 duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. SMYTH:

6 Q Sir, will you, please, state your name and
7 speak loud enough so the entire counsel table can hear
8 you.

9 A My name is Mark Vinson, V-i-n-s-o-n.

10 Q How are you employed?

11 A I am employed as an assistant district
12 attorney with the district attorney's office.

13 Q And to what Court are you currently
14 assigned and what is your position?

15 A I am chief prosecutor of the 263rd
16 District Court in which we are in today.

17 Q And in that position as chief prosecutor
18 of the 263rd, Judge Wallace's Court, did you have an
19 occasion to be involved in the trial of Reinaldo
20 Dennes, the subject matter of this hearing?

21 A Certainly did.

22 Q What was your role in that case?

23 A I was chief prosecutor in that case as
24 well and I was assisted by you, Don Smyth.

25 Q Were you present during the entire voir

1 histories or the dockets showing there was no criminal
2 history?

3 A I told the Court every day we would bring
4 along of what jurors we were going to interview that
5 day.

6 Q And did you provide a copy of that
7 printout involving the 60 persons on each panel to the
8 defense attorney?

9 A The copy was always there. The defense
10 attorney was aware of that. I made him aware it was
11 did, and it was never out of his reach. It was right
12 there with us every day. Everything was there.

13 Q So he had access to it. Each time you
14 impaneled 60 people he had access to whether or not
15 anyone on that panel of 60 had a criminal history or
16 did not have a criminal history?

17 A Certainly did.

18 Q You didn't try to hide that document from
19 him?

20 A Never did.

21 Q During the voir dire of the panel, during
22 the voir dire of this case, did Mr. Odom or his
23 assistant Randy McDonald or his paralegal ever take
24 the opportunity to look at that list?

25 A In some instances, I do recall they did

1 look at some of the list because we had it available.

2 To what extent, I don't recall. It was there.

3 Q So you don't know whether he looked at
4 Irene Collins or didn't pay any attention to it or
5 not?

6 A No. But I was aware of it. And I know
7 when they first filed their motion for new trial and
8 then I pulled Ms. Collins' file and looked at the --
9 because it is attached there as well, because I went
10 back to the entire criminal history packet we had and
11 I pulled hers and attached it to that file for this
12 hearing and how can he say that because everything was
13 available to him, how can they or whoever.

14 Q So he had access to it if he chose to look
15 at it?

16 A It was there.

17 Q Now, with regard to the extraneous offense
18 and Mr. Balderas, first of all, did you ever -- did
19 you know anything about this Tony Balderas or a Tony
20 Balderas prior to, let's say, August 1, 1997?

21 A Never heard of him.

22 Q And you said there is some conversation
23 early on, back in '96, when Mr. Rosenthal was involved
24 in the case so that would be sometime February of '96,
25 that the State was trying to develop an extraneous

1 involving this defendant on a home invasion robbery?

2 A Correct.

3 Q And Mr. Odom was aware of that?

4 A Correct.

5 Q Mr. Parnham was aware of that?

6 A Correct.

7 Q And you were aware of that?

8 A Correct.

9 Q During '96, apparently were you able to
10 definitively tie the defendant, Reinaldo Dennes, into
11 that home invasion robbery?

12 A The only way we could tie into the home
13 invasion robbery we thought was that we would have to
14 bring back one of the codefendants who had been
15 convicted and that was a matter of public record he
16 had been convicted for the home invasion.

17 Q Did you make an attempt to do that?

18 A Yes.

19 Q To your knowledge was Mr. Odom aware of
20 your attempt to use this person that was in the
21 penitentiary, the fact that the person's name was a
22 Fugon, was it?

23 A Yes, certainly was, because I think the
24 defense attorney for that defendant -- actually I
25 think she filed a motion to prohibit us from speaking

1 histories or the dockets showing there was no criminal
2 history?

3 A I told the Court every day we would bring
4 along of what jurors we were going to interview that
5 day.

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7 printout involving the 60 persons on each panel to the
8 defense attorney?

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10 attorney was aware of that. I made him aware it was
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12 there with us every day. Everything was there.

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14 impaneled 60 people he had access to whether or not
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19 him?

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22 the voir dire of this case, did Mr. Odom or his
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4 Irene Collins or didn't pay any attention to it or
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7 when they first filed their motion for new trial and
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20 Balderas prior to, let's say, August 1, 1997?

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23 early on, back in '96, when Mr. Rosenthal was involved
24 in the case so that would be sometime February of '96,
25 that the State was trying to develop an extraneous

1 involving this defendant on a home invasion robbery?

2 A Correct.

3 Q And Mr. Odom was aware of that?

4 A Correct.

5 Q Mr. Parnham was aware of that?

6 A Correct.

7 Q And you were aware of that?

8 A Correct.

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10 definitively tie the defendant, Reinaldo Dennes, into
11 that home invasion robbery?

12 A The only way we could tie into the home
13 invasion robbery we thought was that we would have to
14 bring back one of the codefendants who had been
15 convicted and that was a matter of public record he
16 had been convicted for the home invasion.

17 Q Did you make an attempt to do that?

18 A Yes.

19 Q To your knowledge was Mr. Odom aware of
20 your attempt to use this person that was in the
21 penitentiary, the fact that the person's name was a
22 Fugon, was it?

23 A Yes, certainly was, because I think the
24 defense attorney for that defendant -- actually I
25 think she filed a motion to prohibit us from speaking

1 involving this defendant on a home invasion robbery?

2 A Correct.

3 Q And Mr. Odom was aware of that?

4 A Correct.

5 Q Mr. Parnham was aware of that?

6 A Correct.

7 Q And you were aware of that?

8 A Correct.

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10 definitively tie the defendant, Reinaldo Dennes, into
11 that home invasion robbery?

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13 invasion robbery we thought was that we would have to
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15 convicted and that was a matter of public record he
16 had been convicted for the home invasion.

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24 defense attorney for that defendant -- actually I
25 think she filed a motion to prohibit us from speaking

1 involving this defendant on a home invasion robbery?

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6 A Correct.

7 Q And you were aware of that?

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10 definitively tie the defendant, Reinaldo Dennes, into
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14 bring back one of the codefendants who had been
15 convicted and that was a matter of public record he
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20 your attempt to use this person that was in the
21 penitentiary, the fact that the person's name was a
22 Fugon, was it?

23 A Yes, certainly was, because I think the
24 defense attorney for that defendant -- actually I
25 think she filed a motion to prohibit us from speaking

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22 strong opposition, and in light of an appeal case
23 which he was being represented by her, and I certainly
24 thought the Court would rule against us on that effort
25 since he was represented by counsel and the case was

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1 on appeal.

2 Q Did you quit trying to develop that home
3 invasion robbery that involved the defendant, Reinaldo
4 Dennes, as the master mind just because a codefendant
5 wouldn't testify --

6 A That's correct.

7 Q -- when you gave it up then?

8 A I did because we didn't have sufficient
9 evidence.

10 Q Did you later make another attempt to get
11 somebody else who knew about this home invasion
12 robbery of Reinaldo Dennes to testify?

13 A Yes.

14 Q And who was that?

15 A David Balderas.

16 Q Do you remember the first day you ever
17 talked to David Balderas?

18 A I don't recall but I think you have it on
19 the calendar. I think we both met with him. Do you
20 have the date there?

21 Q Let me. Can you relate that without
22 giving me a date, can you relate it? Were you still
23 in active voir dire of the panel or had the panel
24 already been completed by that time?

25 A I think by that time the panel had been

1 completed.

2 Q Can you relate it to any document in the
3 file? There is a subpoena for a David Balderas and
4 some other people. I think it's dated
5 August 13, 1997.

6 A I think we talked -- the way it worked, I
7 think we talked to Mr. Balderas. That apparently had
8 to be on the 12th. At that time we determined, hey,
9 he can't help us. We weren't even certain we could
10 but after we talked to him, he could help us get the
11 case to the jury so at that time I immediately
12 prepared the subpoena to be filed the next day.

13 Q And you filed the subpoena on
14 August 13, 1997?

15 A That's correct.

16 Q Did you subsequently make Mr. Odom aware
17 of the fact that you now believe you are going to be
18 able to actually prove this extraneous on punishment?

19 A I certainly did.

20 Q And do you recall when you did that?

21 A Immediately following the filing of the
22 subpoena.

23 Q Do you remember having a meeting with the
24 Judge and Mr. Odom back in the jury room of this
25 courtroom on a Thursday, the 14th?

1 A Yes.

2 Q Do you recall at that meeting advising
3 again Mr. Odom that here's the file of subpoenas for
4 the following people, here is who they are, including
5 David Balderas?

6 A Correct.

7 Q Do you recall at that meeting giving Mr.
8 Odom the opportunity to read the offense report
9 regarding that home invasion robbery, which you used
10 as an extraneous offense at punishment?

11 A Correct.

12 Q And in that offense report, which you
13 provided him, did it talk about information from David
14 Balderas about two Cubans being the master minds of
15 this particular home invasion robbery?

16 A Yes. He identified Hector Fugon along
17 with a second person as actually committing the
18 offense but he further stated that it was set up by
19 the defendant, who had befriended Mr. Balderas, and so
20 I didn't feel that Mr. Balderas was a complete
21 stranger to defense counsel because his client, Mr.
22 Dennes, had a prior relationship with Mr. Balderas.

23 Q That's all in the offense report?

24 A If I recall, yes.

25 Q And so that offense report was made

1 available on August 14th?

2 A That's correct. And it's the same offense
3 report that we used during the punishment stage of the
4 trial.

5 Q And it wasn't until, I guess, August 12th
6 that you finally became aware that you might be able
7 to use that particular extraneous offense on
8 punishment?

9 A That's correct.

10 Q In addition to not just telling -- in
11 fact, wasn't there some conversation regarding the
12 State's concern for the well being of the various
13 witnesses in this case in front of the Judge, as well
14 as Mr. Odom, when we were talking about the extraneous
15 offenses?

16 A That's correct. In fact, I think Mr.
17 Balderas represented to us that an investigator had
18 been tracking him down before we even located him.
19 Before we even located him somebody had been tracking
20 him down and we made him aware that no one from our
21 office at that point of time because we weren't aware
22 of it.

23 Q Did you do anything in addition to
24 notifying Mr. Odom of the subpoenas you filed and the
25 people who were on that subpoena list as well as

1 letting him look at the offense report in the
2 extraneous offense case? Did you do anything
3 additional with that on Friday, the 15th of August?

4 A If I recall, I think I took information to
5 his office. I don't recall what it was but it was on
6 the extraneous offense. And I know, I think, he was
7 gone. We arrived there but I did speak to his
8 secretary, receptionist, there in the office and left
9 the information that he had requested or the
10 information that he needed.

11 Q At any time did you ever close your file
12 to Mr. Odom?

13 A No. In fact, we encouraged him to read it
14 and he had free access to the file from the day the
15 case had been filed against his client. He and Mr.
16 Odom met on occasion in the courtroom and reviewed the
17 file and met on occasion and reviewed the file. It
18 was always open.

19 Q When you say he, who are you talking
20 about?

21 A I am talking about Mr. Odom, who
22 represented Mr. Reinaldo Dennes, the defendant.

23 Q Would that file include the offense report
24 of the home invasion robbery that was eventually used
25 as extraneous on punishment?

1 A If I recall, it did. But the problem we
2 were having was just trying to locate someone who
3 could substantiate that the defendant set up the
4 invasion.

5 Q When the strikes were finally made and the
6 jury was finally put together in this case, did Mr.
7 Odom ever make any attempt to strike Irene Collins?

8 A He never did.

9 Q Even though he tried to get her for cause
10 and even though his notes reflect that she is not an
11 acceptable juror to him, he made no attempt to strike
12 her; is that correct?

13 A And I think his notes reflect that she was
14 strong on death and in spite of that, he still didn't
15 strike her.

16 Q She was the number six juror selected; is
17 that correct?

18 A That's correct.

19 Q By the time she was selected, the
20 defendant had only used five strikes?

21 A That's correct.

22 Q They still had ten to go?

23 A Correct.

24 Q And do you recollect when he eventually
25 used all 15 of his peremptory strikes he asked the

1 Court for additional ones?

2 A That's correct.

3 Q And the Court gave him two additional
4 strikes?

5 A That's correct.

6 Q And he didn't even use those two
7 additional peremptory strikes, did he?

8 A He did not.

9 MR. SMYTH: Pass the witness.

10 THE COURT: Thank you.

11

12 EXAMINATION

13 BY MR. SCHNEIDER:

14 Q Mr. Vinson, does HPD investigate
15 extraneous offenses?

16 A Yes.

17 Q Did they provide a supplement to you
18 regarding David Balderas?

19 A No, not that I recall. The only thing
20 that was in the offense report, as I recall, was the
21 -- I am trying to think if he was interviewed by HPD
22 because the things that I remember that was in the
23 offense report was the two defendants going to the
24 wrong home, or whatever, going through the back door
25 and committing the offense. And then I think Fugon

1 was arrested. I don't recall all the details of it.

2 Q So when was it Mr. Balderas' name came to
3 the State of Texas, I mean, HPD, I mean any
4 investigative agency?

5 A I think it was about -- that I recall, I
6 think it was about the time when we filed a motion to
7 subpoena. I think it was about that time that I
8 became aware.

9 Q When was that?

10 A And that's after we interviewed Mr.
11 Balderas.

12 Q What about the other agency?

13 A What other agency?

14 Q Did HPD bring him to your attention?

15 A I don't recall who brought Mr. Balderas to
16 my attention.

17 Q What agency brought him to your attention?

18 A I do not recall.

19 Q Do you have that information in your file?

20 A I would think it should be there.

21 MR. SCHNEIDER: Would that produce that
22 information of which agency and when?

23 MR. SMYTH: Balderas' name is in the
24 offense report that the State received from HPD, and
25 it's in the offense report that the State gave to Mr.

1 Odom to read.

2 MR. SCHNEIDER: What is the date of that
3 offense report?

4 MR. SMYTH: I have no idea what the
5 offense but it was pretty close to the time the event
6 committed.

7 MR. SCHNEIDER: When was the event
8 committed?

9 MR. SMYTH: I want to say September of
10 '85. So it has been in the offense report a long
11 time.

12 MR. SCHNEIDER: May that offense report be
13 admitted for the record?

14 THE COURT: What? Don't you have a copy
15 of it?

16 MR. SCHNEIDER: No, Your Honor.

17 MR. SMYTH: I don't know whether they got
18 a copy of it.

19 THE COURT: Sure. Let's include that part
20 and parcel.

21 MR. SMYTH: I'll certainly do that.

22 Q (Mr. Schneider) Mr. Balderas' name is in
23 the offense report dated September, 1995, according to
24 Mr. Smyth?

25 A If Mr. Smyth says that, I'm not going to

1 argue with his recollection.

2 Q At some point did you request that
3 somebody go and interview Mr. Balderas?

4 A I didn't request anyone to go and
5 interview Mr. Balderas. It was our intent to try to
6 locate Mr. Balderas and interview him ourselves.

7 Q When did you locate Mr. Balderas?

8 A Mr. Balderas came to our office. I think
9 it was the day before the subpoena was filed.

10 Q All right. So sometime the week of August
11 11th he came to your office?

12 A The subpoena was filed on the 13th. He
13 had to come about the 12th.

14 Q And you picked the last juror on the
15 11th. You picked the last juror on the 11th?

16 A If the record reflects that, that's
17 correct.

18 Q Who brought him to your office?

19 A I think my investigator located him. I'm
20 not certain if she brought him. I'm not certain.

21 Q When did your investigator locate him?

22 A I don't know. I guess it would have to be
23 at or near the time he appeared in my office.

24 Q Do you have any reports from your
25 investigator about when she located Mr. Balderas?

1 A I have no such report.

2 Q No such report?

3 A I have no such report.

4 Q No notes?

5 A I have no notes. The only concern to me
6 was if Mr. Balderas was out there, get him here and
7 see if he could help. I didn't keep notes on that.

8 Q When you did you start investigating or
9 looking for Mr. Balderas?

10 A When it became apparent that Hector Fugon
11 was not going to assist us.

12 Q I show you Defendant's 24. Do you
13 recognize it?

14 A Yes.

15 MR. SMYTH: Could I see that document
16 before any testimony regarding that?

17 These are documents that are already in
18 the Court's file so I certainly have no objection to
19 them.

20 Q Defendant's Exhibit 24 is a document
21 regarding Mr. Fugon filed by his lawyer saying leave
22 him alone --

23 A Right.

24 Q -- and your conversations with his lawyer
25 prior to that date; is that correct?

1 A Correct.

2 Q And you had bench warranted, caused to be
3 bench warranted from TDC?

4 A That's correct.

5 Q And you brought him back and then he was
6 returned to TDC on September 2nd; is that correct?

7 A If the document says that.

8 Q And Defendant's 25 is a Bench warrant
9 returned?

10 A If the document says that.

11 Q So Mr. Fugon refused to talk to you?

12 A No. His attorney refused to let us talk
13 to him.

14 Q And he's not going to be a witness in this
15 case?

16 A After his attorney refused to allow us to
17 talk to him, I think you are aware that he couldn't be
18 a witness.

19 Q Now, in regards to juror, Ms. Collins, you
20 have a printout here?

21 A It should be attached right up there.

22 Q I have marked Defendant's Exhibit 26, the
23 printout that was handed to me by Mr. Smyth.

24 THE COURT: What's 25?

25 MR. SCHNEIDER: The return, bench warrant

1 return.

2 Q Let me show you Defendant's Exhibit 26.

3 MR. SMYTH: We have no objection to it.

4 A Yes. I can recognize it.

5 MR. SCHNEIDER: Your Honor, I would offer
6 Defendant's Exhibit 26 into evidence.

7 THE COURT: Defendant's 26 is admitted.

8 Q Well, now, you had the statement to your
9 questionnaire?

10 A Correct.

11 Q Did you make any notes on the
12 questionnaires concerning the contents of Defendant's
13 26?

14 A No. No, my questionnaire.

15 THE COURT: What is Defendant's Exhibit
16 26?

17 Q Is there any question 37 through 41 -- did
18 you make any comments regarding the contents of
19 Defendant's 26?

20 A No more, counsel, than criminal history.

21 Q Excuse me?

22 A Criminal history.

23 Q Did you write anything down yourself
24 regarding her criminal history?

25 A That's all I put down. I had here the

1 attached printout.

2 Q Now, are these -- is this your
3 questionnaire?

4 A This is my questionnaire. These are my
5 notes.

6 Q Is there any notes regarding the criminal
7 history that is reflected in Defendant's Exhibit 26
8 contained in your questionnaire?

9 A Prior deferred.

10 Q Is that in your handwriting?

11 A I think every one can recognize my
12 handwriting.

13 MR. SCHNEIDER: I offer to mark this as
14 Defendant's Exhibit 27.

15 THE COURT: All right.

16 Q Now, questions 37 and 40 --

17 A That's correct.

18 Q -- when did you bracket those?

19 A I bracketed those this morning while you
20 were asking questions.

21 Q And the green underlining?

22 A That was during the trial.

23 Q The yellow underlining?

24 A I mean, during the voir dire.

25 Q So, on question 40, you underlined that

1 she had been arrested for driving without a license?

2 A No, I understand driving.

3 Q Driving without a license?

4 A Whom I did not know.

5 Q And you underlined that question?

6 A That's correct.

7 Q Did you ask her any questions about that?

8 A No.

9 Q At any time you were reviewing this were
10 you aware that she was on deferred?

11 A Yes.

12 Q So you knew?

13 A No, that's improper. At the time that I
14 looked at it we were doing jury selection. I was
15 aware that she had two deferred adjudications and each
16 had been set aside.

17 Q So you knew she had been arrested on at
18 least two occasions that were not counted in the
19 answer to question number 40?

20 A Yes. I knew she had been arrested on two
21 occasions.

22 Q And you knew that the answer to question
23 number 40 where it says, "ever been arrested or member
24 of your family or any acquaintance ever been
25 arrested," you knew that the answer to that question

1 was not true?

2 A No. I did not know it was not true.

3 Q You knew she had been arrested on two
4 occasions?

5 A Yes, sir.

6 Q And those two occasions were written down
7 there?

8 A They were not there.

9 Q On question 37, "Have you, any member of
10 your family, or any acquaintance, ever been accused in
11 any criminal action?" There was a "yes" there.

12 A That's correct.

13 Q Was there any notation made by this juror
14 regarding her prior deferred adjudication?

15 A No, just on the outside of the
16 questionnaire.

17 Q That you wrote?

18 A That's my writing.

19 Q Did you specifically inform Judge Densen?

20 MR. SMYTH: I ask Mr. Schneider to resume
21 his seat and, first of all, object to any further
22 question that document which -- have you offered it?

23 MR. SCHNEIDER: Offer Defendant's Exhibit
24 27, if I haven't.

25 THE COURT: Any objection?

1 MR. SMYTH: Yes. It's irrelevant, what's
2 in his mind regarding this particular juror. They are
3 not claiming that there is some problem because we
4 didn't strike him so what notes we made regarding that
5 document is absolutely irrelevant to this motion,
6 Judge.

7 THE COURT: Sustained.

8 MR. SCHNEIDER: I'll include it in the
9 record for a bill.

10 THE COURT: Certainly.

11 Q So you knew at that time you were
12 questioning that she did not answer questions
13 consistent with the information you had; is that
14 correct?

15 A I knew she had two arrests there for
16 deferred.

17 Q And you knew --

18 A Well, whether they were consistent, I
19 don't know what going through her mind at that time
20 when she filled out the questionnaire. I don't know
21 what she was thinking.

22 Q Did you inform Judge Densen that this
23 juror had been arrested for public lewdness?

24 A No, and I never have.

25 Q Did you inform Judge Densen that this

1 particular juror had been arrested for prostitution?

2 A No, and I would not.

3 Q And you would not?

4 A And I would not.

5 Q Even though the juror --

6 A And I would not. The answer is I would
7 not.

8 Q So it's irrelevant to you whether a juror
9 answers the question or not?

10 A Whether it's irrelevant to me is not the
11 issue. Your question is would I have asked or made
12 the Judge aware that she had been arrested for
13 prostitution. She received deferred adjudication.
14 That did not concern me.

15 Q Did you hand this document, Defendant's
16 Exhibit 26, to defense counsel?

17 A I don't recall handing him that. Did I
18 didn't hand it to him?

19 Q Did you tell him that Ms. Collins had been
20 arrested?

21 A No. No, the documents were there. I
22 don't think I had to lawyer for him.

23 Q Did you tell him about the deferred
24 adjudication?

25 A No.

1 Q Did you tell him about the public lewdness
2 or the prostitution?

3 A If I didn't tell him about the deferred, I
4 didn't tell him that as well.

5 Q Did you tell him that the answers to
6 questions 37 and 40 may have been incorrect?

7 A No.

8 MR. SCHNEIDER: Pass the witness.

9

10 EXAMINATION

11 BY MR. SMYTH:

12 Q Mr. Vinson, Ms. Collins was, I believe,
13 number 60 on the first panel of 60 that was put
14 together by the Court; is that correct?

15 A That's correct.

16 Q And that entire criminal history or lack
17 of criminal history on all the jurors to number 60 was
18 available for when any juror was voir dired in this
19 case; is that correct?

20 A That's correct.

21 Q And that entire packet, starting with
22 juror number 1 all the way down to Irene Collins,
23 juror number 60, was in that packet?

24 A That's correct.

25 Q And that entire packet was made available

1 to counsel for the defense on the first day of voir
2 dire. That was Randy McDonald and Wendell Odom.

3 A That's correct.

4 Q And they had that document in their hands
5 on the first day of voir dire before any -- did they
6 have that document in their hands on the first day of
7 voir dire before a single juror was talked to?

8 MR. SCHNEIDER: Your Honor, which document
9 are we talking about?

10 Q That document would be the entire list of
11 the entire criminal history, lack of criminal history,
12 including -- excuse me -- Defendant's 26, which would
13 have been part of that entire criminal history run?

14 A Okay. The first day we started the voir
15 dire. That's what I am trying to get squared. The
16 first day the Judge spoke to them and they got a short
17 rendition of what they were expected to do. We broke
18 them down and started assigning days for them to come
19 back.

20 Now, I know for certain that when they
21 came back, when we started the individual voir dire,
22 we had that because by that time we had determined who
23 we wanted on the panel and who was going to be
24 dismissed. And we had all of that information
25 available to both sides. It was always right within

1 arm's reach. In the room we selected the jury panel
2 in, we could sneeze into each other.

3 Q In fact, the criminal history run on every
4 juror was available at the initial voir dire when the
5 Judge talked to the group?

6 A I would believe so.

7 Q And if it wasn't -- it certainly was
8 available before any individual voir dire was spoken
9 to by an attorney?

10 A That's correct.

11 Q And, in fact, it was given to Mr. McDonald
12 as well as Mr. Odom on that first day regarding the
13 first 60 and Ms. Collins was number 60 in that first
14 60?

15 A That's correct.

16 Q So what they did with it, you don't know.
17 Do you have any idea?

18 A No. And moreover there is a public record
19 that they had access to as well through the clerk's
20 office if they thought they wasn't using their time
21 correctly. It wasn't like it was out of the State of
22 Texas, right here in Houston, Harris County.

23 Q So you didn't hide this from Mr. Odom or
24 Mr. McDonald?

25 A No.

1 Q Or anybody else --

2 A No.

3 Q -- representing this defendant?

4 A No. And since it was deferred
5 adjudication, I didn't see any reason to attempt to
6 embarrass Ms. Collins or anything. She had succeeded.
7 My interest was could she follow the Court's rulings
8 and return a true verdict. And that was the only
9 thing I was concerned about.

10 Q And is there any reason for you to believe
11 that Mr. Odom didn't look at that criminal history
12 himself?

13 A No. I think Mr. Odom was very diligent
14 throughout the entire jury selection process. And he
15 was looking for any way he could to get rid of anyone
16 that he perceived to have a strong State interest in
17 the death penalty.

18 Q And these criminal history information or
19 the result in the deferred adjudication and subsequent
20 dismissals, are those, in your understanding of law,
21 is that a ground for automatic dismissal or discharge
22 of a juror?

23 A And, no, and they are misdemeanors anyway
24 and, again, my interest is not to embarrass the person
25 but to see if they could follow the law.

1 Q And Mr. Odom didn't try to get Ms. Collins
2 for cause; is that correct?

3 A Yes, he had other reasons. I think he
4 stated, according to his notes -- and I don't
5 particularly recall his voir dire -- but relying on
6 his notes you have there and "strong death," or
7 something of that nature. And the way he certainly
8 had an opportunity when we made our selection.
9 Sometimes we go through what we will call a little
10 bluffing game where we will accept a juror
11 anticipating that the defense will strike them but in
12 this case, when we accepted the juror, in my mind, I
13 thought Ms. Collins was going to be on the jury unless
14 Mr. Odom struck her because I wasn't aware of his
15 notes.

16 Q And Mr. Odom made no attempt to strike her
17 at any time?

18 A No.

19 Q Other than his attempts to strike for
20 cause?

21 A No.

22 MR. SMYTH: Nothing further.

23

24

25

EXAMINATION

BY MR. SCHNEIDER:

Q Is it your testimony that Mr. McDonald and Mr. Odom had this Defendant's Exhibit 26 in their possession?

A I don't know if they had it in possession. It was available to them right there in the courtroom just like that document is laying right there. A stack of documents was on the table in front of you. They were criminal histories and everybody understood that.

Q And you are not saying though you saw him look at this?

A I'm not saying that.

Q And you are not saying you handed it to him?

A I'm not saying that.

Q And you aren't saying that this juror number 60 has an arrest record. You told him?

A I didn't tell him she had an arrest record.

Q You didn't show him the front of your form that said "prior deferred"?

A No. That was for my notes and he didn't show me the front of his form.

1 Q Question 64 A says, "Have you ever visited
2 inside a prison, jail or a detention center?" The
3 answer is "no."

4 A I think if you're arrested, that's not a
5 visit. A visit is something voluntarily.

6 Q The person inside the jail, going to jail?

7 A Read the content, "I have visited." I'm
8 not a visitor if I'm arrested and taken there. That's
9 not a visit in my mind.

10 MR. SCHNEIDER: Pass the witness.

11 THE COURT: You can stand.

12

13 EXAMINATION

14 BY MR. SMYTH:

15 Q One question. Did you point out to Mr.
16 Odom or Mr. Mc Donald, and whoever else was helping in
17 this case for the defense, that there's the criminal
18 histories?

19 A Everyday there was a stack right about the
20 same place and I bring it there and set it down.
21 "Here we go. Here we are, guys." Boom. They had
22 free access. Go for it.

23 MR. SMYTH: I said one question.

24 THE COURT: Mr. Schneider.

25 MR. SCHNEIDER: Nothing further.

1 THE COURT: Take your seat.

2 Any further witnesses?

3 MR. SMYTH: No, Your Honor.

4 THE COURT: Okay. Subject to the State
5 being able to review notes of the defense counsel and
6 subject to the defense being able to receive from the
7 State a copy of offense report, is there anything
8 further?

9 MR. CHARLTON: No, sir.

10 THE COURT: Then, obviously, let's recess
11 this case until both sides had an opportunity to
12 review those documents, a brief recess. Sometime, I
13 would think, late next week when we will hear any
14 arguments, and I will make a ruling at that time.

15 MR. SMYTH: State will bring over a copy
16 of that offense reports and file mark it today and
17 have it in the Court's file.

18 THE COURT: And I order the defense to
19 have the State copies of the notes of defense counsel
20 no later than tomorrow.

21 MS. KAHN: May I be clear what notes the
22 State and the Court is ordering me to produce?

23 THE COURT: Juror notes on the voir dire.

24 MR. SMYTH: The spread sheet from which
25 Mr. Odom made his strikes.

1 THE COURT: That's exactly it. Nothing
2 more than.

3 MS. KAHN: Renew the objection on the
4 basis of privilege and work product.

5 THE COURT: Right.

6 MS. KAHN: And the basis of relevance
7 again.

8 THE COURT: I think I have made my ruling.
9 Anything further?

10 MR. VINSON: Not from the State.

11 MR. CHARLTON: No, Your Honor.

12 (Court adjourned in this cause.)

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1 November 13, 1997

2 THE COURT: State ready to proceed?

3 MR. VINSON: State's ready.

4 Defense?

5 MR. CHARLTON: May we take up a
6 preliminary matter? We have issued a subpoena for
7 some records. Ms. Vollman from the D.A.'s office is
8 here to -- she was here a few minutes ago. I think
9 she answered the telephone. She has filed a motion to
10 quash that subpoena. And that I think is directly
11 relevant to some issues that are before you, and I
12 would like if we could resolve that issue.

13 THE COURT: Let's resolve it.

14 MR. CHARLTON: I informed the Court in
15 response to our subpoena that I had filed a motion to
16 quash certain records and after we were called some
17 dirty names --

18 THE COURT: Okay. I want to see a copy of
19 it. She is getting a copy.

20 MS. VOLLMAN: Judge, we received a
21 subpoena, I assume, pursuant to 24.03. One of the
22 issues that I think needs to be addressed is the
23 materiality of the information that they are seeking.
24 And in addition to that, we have asserted a privilege
25 of work product regarding one of the documents that

1 they have requested. And the other document we
2 believe should remain confidential because of the
3 nature of the document itself. And we, also, if the
4 Court is so inclined, we would like to present those
5 to the Judge for an in camera inspection regarding
6 those three issues.

7 THE COURT: Response?

8 MR. CHARLTON: Yes, sir. As to the second
9 response about I understand the confidentiality that
10 they seeking, especially, I presume, they are
11 referring to item number two in their response, given
12 the nature of the information we are seeking, we have
13 no objection to having these proceedings, as far as
14 that particular document, conducted in private, and we
15 would waive a public hearing on disclosure of that
16 particular document in evidence relating to that
17 particular document. So, I mean, if the Court is of
18 concern about the nature of the privacy and you would
19 rather me not make recitations in the record, then my
20 suggestion would be that either clear the courtroom or
21 go back into your chambers and have the discussion
22 back in chambers.

23 THE COURT: So the argument basically of
24 the State is it's confidential. It is not an
25 alternative argument, that it is not germane to the

1 issues at hand?

2 MS. VOLLMAN: That is the case and it's
3 irrelevant. It's not material to the case. And I
4 don't want to be arguing the motion for new trial in
5 the validity of that with the prosecutors that are
6 handling it. As far as the documents, it is not
7 material. These documents are not material, and I
8 think the materiality would be to the Court upon a
9 recap and the other document, which we are asserting
10 is a work product document.

11 MR. CHARLTON: If I can respond to that, I
12 think we can make a very good materiality argument.
13 And for several reasons, I just don't want to start
14 treading on that. If the State has a fear about
15 disclosure of information that is addressing item
16 number two in their motion, then I would prefer -- I
17 don't mind acquiescing to that fear. I'd just rather
18 make my discussions about materiality in private in
19 order to accommodate that interest. However, you
20 know, we are fully prepared to make a very cogent and
21 a persuasive argument why those documents are at
22 issue.

23 THE COURT: Okay. Do you have the
24 documents with you?

25 MS. VOLLMAN: For record, I am presenting

1 to the Court a manila envelope that has the documents
2 that are subject of the subpoena to custody for an in
3 camera inspection and request that it be kept
4 confidential.

5 THE COURT: Okay. Let me quickly go back
6 to chambers and read those documents and what is
7 applicant and whether or not subject to disclosure.

8 MS. VOLLMAN: One additional fact: We
9 would ask you to take notice of the expiration date
10 that is reflected on it.

11 (Recess taken.)

12 THE COURT: I have reviewed the
13 documents.

14 Is there anything further before I make a
15 determination as to whether or not the subpoena will
16 be quashed or not?

17 MR. CHARLTON: I think the only concern,
18 whether you want us to address our arguments about why
19 it is material.

20 MR. SCHNEIDER: Excuse me.

21 (Off-the-record discussion held.)

22 THE COURT: Okay. Well, let's get back on
23 the record.

24 I have read now both arguments in camera.
25 Does defense counsel wish to argue about

1 the relevancy based on the documents that I reviewed
2 and the dates that are applicable to these documents?

3 I do not see the relevancy at all with
4 regard to the trial of this case or the testimony of
5 anybody that has provided any evidence in this case
6 regarding the effect of these documents on that
7 person's testimony.

8 MR. CHARLTON: Then in order for us to go
9 forward again -- and, again, I am suggesting this
10 because I want to accommodate their interests by
11 keeping certain matters confidential -- I would like
12 to go ahead and make a proffer to the Court of why we
13 think it is relevant.

14 THE COURT: Let me rule. I rule that the
15 subpoena is to be quashed, and I'll allow you to make
16 a proffer.

17 MR. CHARLTON: Do you want to do it in
18 private?

19 MS. VOLLMAN: We would do that. For
20 record, you know, for obvious reasons now that you
21 have had an opportunity to look at the documents,
22 there are concerns.

23 MR. SCHNEIDER: May those documents be
24 sealed?

25 THE COURT: We can do that after the

1 hearing or do it now.

2 MR. CHARLTON: I am trying to accommodate
3 Ms. Vollman's schedule because we ask that those
4 records be sealed and made part of the appellate
5 record.

6 So, sorry, do you want to wait?

7 MS. VOLLMAN: Whatever you all want to
8 do.

9 THE COURT: Okay. Let's go back in
10 chambers and take care of this matter.

11 MR. SCHNEIDER: May we bring Mr. Munier
12 with us?

13 (Whereupon, the following proceedings were
14 held in the Judge's chambers.)

15 THE COURT: Okay.

16 MR. CHARLTON: Thank you for allowing us
17 this opportunity.

18 It's our position that the State left you
19 with the impression the last time that in the course
20 of investigating the extraneous offense that there was
21 a Cuban national Fugon, who was convicted of a crime
22 and put his case on appeal and, therefore, was
23 invoking his Fifth Amendment privilege and was
24 unavailable. And that's why they didn't go any
25 further.

1 THE COURT: I was a witness to his counsel
2 being very emphatic about the fact that he was not to
3 testify. And that's about the extent of it that I
4 have had any personal dealings with her or him.

5 MR. CHARLTON: Nevertheless the State's
6 position was that Balderas just fell into their lap --
7 and that is my words, not theirs -- appeared as a
8 friendly witness between voir dire and the
9 commencement of the trial. As a point of where they
10 were unable to comply with your order regarding those
11 extraneous offenses, we think then that the documents
12 that you have show that this witness Balderas had a
13 relationship with the district attorney's office -- an
14 extensive relationship with the district attorney's
15 office -- that existed several months prior to the
16 commencement of the trial. And I think the record
17 reflects at one point there was even an April trial
18 setting in this particular case.

19 THE COURT: How is it a correlation, the
20 fact he may or may not have had a relationship with
21 the district attorney and counsel trying this case had
22 any idea there was a relationship there that he was
23 involved in this case whatsoever?

24 MR. CHARLTON: I think that's our point,
25 that secondary point in this matter. The State's

1 position is that, you know, Balderas apparently was
2 unavailable. That's not accurate. He had a working
3 relation and we believe the documents speak of an
4 ongoing working relationship with the State of Texas
5 out of which he received a dismissal of a major drug
6 case.

7 The second part to that problem -- and
8 this is the more problematic -- that relationship with
9 the State and his desire to work with the State in
10 order to secure dismissal of the case, not disclosed
11 to trial counsel when Mr. Balderas testified, and we
12 think that should have been disclosed under Brady.

13 That's impeachment, exculpatory, and that should have
14 been disclosed, so you have really a two-fold problem
15 is that they should have found out and they could have
16 known about Balderas and his role and his willingness
17 to cooperate had they simply gone over to whoever
18 negotiated on behalf of the State. And I presume that
19 was Mr. Lambright. I presume that. I don't know
20 that, but I presume that's the case.

21 And, secondly -- and, really, what's far
22 more important about that relationship and his
23 willingness to work for the State in order to get
24 himself out of a serious jam was never disclosed to
25 Mr. Odom under Brady.

1 And we have a case called -- with the
2 Fifth Circuit, granted relief and a capital case that
3 was released six weeks ago where that precise -- not
4 precise impeachment evidence but that kind of similar
5 kind of impeachment evidence -- well, at least
6 impeachment -- whether similar I'll leave you to
7 decide -- but impeachment about the only witness to an
8 extraneous offenses offered at the punishment phase
9 was not disclosed to the State or to defense counsel
10 before trial. And so we think that this relationship
11 that Mr. Balderas had with the prosecution and the
12 district attorney's office is extremely relevant for
13 two very important issues.

14 THE COURT: I could see your point if
15 there was an ongoing relationship, if the documents
16 were to be clear enough that any relationship that may
17 was already either -- well, let's say concluded well
18 before the trial date, how exactly would that impact
19 on Mr. Balderas' testimony? His obligations were
20 totally severed at that point.

21 MR. CHARLTON: Davis versus Alaska, it is
22 the witness' motivation that has to be explored in
23 front of the jury, his bias or willingness to
24 cooperate with the State is the appropriate area for
25 cross examination. Under Green versus State, you

1 know, even if he were to deny on the stand that he had
2 any such motivation is no moment. The language from
3 Green, an incredible denial is probably more probative
4 of his credibility than credible admission that he had
5 such an interest.

6 THE COURT: Well, again, I go back and
7 I'll let the State pick this up -- I go back to the
8 fact there is a contract and that contract has been
9 fulfilled and concluded well before the time of
10 trial. I don't really see the correlation between Mr.
11 Balderas' testimony to be in favor or biased in favor
12 of the State, any or all obligations that he may or
13 may not have had with the State will be concluded long
14 before the trial occurred, such that he would be under
15 no incentive to taint his testimony, given the fact
16 that any charges that may have been at one time
17 pending against him had been concluded.

18 MR. CHARLTON: Again, those charges can be
19 resurrected but nevertheless and within the statute of
20 those charges resurrected, he still has a motive to
21 stay on the --

22 THE COURT: Does the State wish to
23 respond?

24 MS. VOLLMAN: Judge, there is a case --
25 this is a Court of Criminal Appeals out of Texas and

1 an Ex Parte Scott Kimes. I think 872 SW 2d, 700.

2 THE COURT: Spell that.

3 MS. VOLLMAN: K-I-M-E-S -- and it
4 basically talks about the Brady issue, if a prosecutor
5 fails to provide certain evidence. The Court on page
6 702 said, "Thus, under Bragley, a due process has
7 occurred if" -- referring back to because information
8 that was not provided under Brady has occurred -- if
9 the prosecutor failed to disclose the evidence, the
10 evidence is favorable to the defendant; and the
11 evidence is material, such that there is a reasonable
12 probability that had the evidence been disclosed to
13 the defense, the outcome of the trial would have been
14 different."

15 "A prosecutor does not have a duty to turn
16 over evidence that would be inadmissible at trial.
17 Evidence offered by a party to show bias of an
18 opposing witness should be excluded if that evidence
19 has no legitimate tendency to show bias of an opposing
20 witness."

21 And I think in this particular case it's
22 not directly on point, but I think it does go to show
23 that the crucial issues in this case, what bias would
24 that man have if the contract was completed and it was
25 over, one issue, you know, one case. It was

1 completed, and it was over with by the time he
2 testified.

3 THE COURT: That's my point.

4 Does the State wish to further comment on
5 the record? Does that pretty well qualify?

6 Anything further for the proffer?

7 MR. CHARLTON: We proffer the testimony of
8 Mr. Balderas' counsel, John Munier, who would testify
9 about the circumstances about that agreement. And we
10 would offer his testimony.

11 Did you want to add anything to that,
12 Stanley?

13 MR. SCHNEIDER: Mr. Munier would testify
14 that there was a contract and the contract was in
15 terms whether it was going to be fulfilled.

16 THE COURT: Why do we need the testimony
17 if I already read the contract? Is there an
18 obligation as part of the appellate?

19 MS. VOLLMAN: I have one question. Since
20 the subpoena is quashed, I want to run one thing down
21 with my counsel across the --

22 THE COURT: Depends on whether or not Mr.
23 Munier's testimony is necessary or not.

24 MR. VINSON: The contract speaks for
25 itself.

1 THE COURT: If we are not going to offer
2 the contract to appellate and obviously there may be
3 some necessity for Mr. Munier to testify.

4 MR. SMYTH: Judge, first of all, we
5 stated, and I think Mr. Vinson clearly stated on the
6 record when he was on the stand, that we didn't make
7 any deals with Mr. Balderas. We didn't know he had a
8 contract with our office for anything regarding that
9 prior conviction. He came in, as the Court recognized
10 five or so months. He completed whatever contract he
11 had with some other portion of our office, and we
12 didn't ask him for anything other than to tell us what
13 happened. We didn't offer him anything. We went down
14 and got use immunity for his testimony but we didn't
15 tell him we had it. Everything was disclosed.

16 THE COURT: Excuse me. For the record, I
17 know we probably have it somewhere else at this
18 particular hearing, what is it Mr. Odom was told about
19 Mr. Balderas' background regarding any matter?

20 MR. SCHNEIDER: We can ask Mr. Odom.

21 MR. SMYTH: I honestly -- I know I told
22 who he is and had a relationship with your client for
23 a number of years, and then gave him a copy of the
24 offense report in which Balderas' name came up and
25 somebody had a connection with him.

1 THE COURT: My understanding is that Mr.
2 Balderas was not charged in that offense.

3 MR. VINSON: He was not going to be
4 charged. And we made Mr. Odom aware of that.

5 THE COURT: And the reason was
6 insufficient evidence.

7 MR. SMYTH: To his testimony, we couldn't
8 corroborate anything he said. We couldn't use it.

9 THE COURT: Mr. Odom was aware?

10 MR. SMYTH: Sure.

11 THE COURT: Your testimony a moment ago
12 was you did not know there was a prior contract.

13 MR. SMYTH: We didn't have any idea of
14 John Munier and George Lambright of special crimes
15 ever working out a contract and disposing of any case.
16 We just knew the case, according to Balderas, got
17 disposed of somehow.

18 THE COURT: Go ahead.

19 MR. SCHNEIDER: Mr. Smyth just stated that
20 Mr. Balderas got use immunity, a formal use order.

21 MR. SMYTH: No, there wasn't.

22 MR. SCHNEIDER: That was not disclosed?

23 MR. VINSON: Don't say it was not
24 disclosed. We made -- if you are an attorney, and if
25 I come to you and I say that we are not going to

1 prosecute him, I don't care what he said on the stand
2 about this offense, as long as he didn't kill anybody,
3 we are not going to prosecute, what does that say to
4 him.

5 MR. SCHNEIDER: That means you are not
6 going to need use of immunity.

7 MR. SMYTH: There was no formal order
8 entered.

9 THE COURT: That's enough of that.

10 Fine. I think the record is clear that
11 there was a contract. I think I have indicated, from
12 my reading of that document, that the contract had
13 been fulfilled many months before the testimony of Mr.
14 Balderas, that any obligations under that contract
15 were concluded by the time he testified. And I still
16 believe the documents, as I have said, are
17 confidential and are not relevant to the issues with
18 regard to the motion for new trial.

19 What else do we need to proffer?

20 MR. CHARLTON: The only thing, Ex Parte
21 Castellano and on there is an extensive discussion of
22 imputed knowledge that Mr. Smyth's argument about
23 someone else in the office knew this and Mr. Vinson
24 and I didn't know is of no moment. That if one branch
25 of law enforcement knows of this evidence, the

1 responsibility has to be shared by all of them. Ex
2 parte Castellano -- and assuming Mr. Lambright
3 negotiated the agreement on behalf of district
4 attorney's office and that knowledge is imputed to Mr.
5 Vinson and Mr. Smyth. We have a copy of Castellano
6 and his argument he didn't know is legally of no
7 moment.

8 The other thing that we do ask that, since
9 you have quashed the subpoena and I am presuming that
10 you don't wish to hear from Mr. Munier on the stand,
11 we would ask --

12 THE COURT: Not that I don't like Mr.
13 Munier.

14 MR. CHARLTON: I understand.

15 MS. VOLLMAN: Before you do that, I would
16 rather not attach an in camera.

17 MR. CHARLTON: That's what we are going to
18 ask that you seal the documents and treat them as part
19 of the appellate record.

20 THE COURT: Before I agree to do that,
21 I'll give both sides time expeditiously to provide my
22 guidance as to whether or not that is necessary,
23 required. I think, I take it, the State will do that
24 and, certainly, the defense. You will have an
25 opportunity to show whether or not based upon the fact

1 that I have now quashed the subpoena as to whether it
2 is proper to attach those documents, which I have
3 ruled are confidential, as part of the appellate
4 record, which somewhat compromises and I think
5 confidential.

6 MR. CHARLTON: We would agree, however,
7 that if your attachment as a part of an appellate
8 record that they should be sealed from public view so
9 that only to be examined either on motion by us in
10 front of the Court of Criminal Appeals or by the Court
11 of Criminal Appeals.

12 THE COURT: I am prepared to make a ruling
13 on that tomorrow so I would want something
14 expeditiously to determine whether or not there is any
15 law or anything else that guides me in that matter.

16 MS. VOLLMAN: We also ask that this
17 particular part of the hearing be sealed.

18 THE COURT: It is sealed.

19 Anything further before we go back in the
20 courtroom?

21 MR. SCHNEIDER: The attorneys have to have
22 access to this hearing to do the record.

23 MR. CHARLTON: I sealed it for the public
24 record.

25 THE COURT: Certainly. I am talking not

1 to be disclosed publicly.

2 Anything further?

3 Let's go back in the courtroom and
4 continue where we left off.

5 (Whereupon, the following proceedings were
6 held in open Court.)

7 THE COURT: All right. Let's get on the
8 record, please.

9 Let the record reflect that I have now
10 agreed to attach those documents as part of the
11 appellate record, that they will be sealed but will be
12 attached to the appellate record.

13 Let's proceed on behalf of the defense, I
14 guess.

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1 Is there any necessity to swear Mr. Odom
2 again?

3 MR. CHARLTON: No, sir.

4 THE COURT: Let's proceed.

5 MR. SCHNEIDER: The State asked to see an
6 original of document we provided them last week. The
7 original needs to stay in Mr. Dennes' file, and we
8 object to them taking the original and marking the
9 original document and attempting to offer the original
10 document in Mr. Dennes' file and try to stay in. That
11 needs to be there.

12 MR. VINSON: The reason we want to offer
13 the original, we cannot read the duplicate.

14 MR. SMYTH: The copy provided to us, it's
15 not their fault but the pencil marks don't come
16 through.

17 MS. KAHN: We can try to make a better
18 copy of that.

19 THE COURT: Excuse me. Let me make a
20 ruling. We will allow the original at this time,
21 subject to the fact that the defense has an absolute
22 right to substitute the original for an adequately
23 readable copy.

24 MR. VINSON: We have no objection to that.
25 Your Honor, we have had marked State's

1 Exhibit 1 for identification, a drawing of the
2 defense's strikes in the Reinaldo Dennes' case. We
3 will make it as State's Exhibit 1. Mr. Odom has an
4 opportunity to look at that.

5 (Whereupon, State's Exhibit No. 1 was
6 marked for identification.)
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1 WENDELL ODOM,

2 was called as a witness by the State and, having been
3 duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. VINSON:

6 Q Is that the original of the strikes you
7 made during the course of trial?

8 A Yes. This is my original chart that I did
9 my strikes off of it, the day we did our strikes.

10 MR. VINSON: Your Honor, we will offer into
11 evidence for the appellate record, with the
12 understanding of the Court's ruling, where the defense
13 will make a readable copy available to the Court.

14 THE COURT: Let me further expand upon
15 that. If the defense also is trying to make a copy,
16 the pencil don't come out, as long as the defense
17 reproduces any markings that are not recordable by use
18 of a copy machine, if they will make identical
19 reproduction by hand, I think that will suffice.

20 Q (Mr. Vinson) Now, if you will continue
21 to look at State's Exhibit 1 there, Mr. Odom. Now, so
22 that the record can be quite clear on this, you use
23 your first strike striking Mr. Thomas John Kelly, is
24 that correct, and that was 4 in the pool?

25 A Yes. I had him on less as 23, number 4 in

1 the pool, and I believe that is my first strike.

2 Q And then number 7 in the pool, Martha Jean
3 Gutierrez G-u-t-i-e-r-r-e-z?

4 A Gutierrez, I believe, was my second
5 strike.

6 Q Then number 9 was your third strike; is
7 that correct?

8 A The one I have listed is number 36, Mr.
9 Alamo.

10 Q Alaimo?

11 A R-O but maybe it's an "E".

12 Q And M-O. And that was the third strike?

13 A Yes, sir.

14 Q And then you struck number 10 in the pool,
15 Daniel Lee Williams?

16 A Yes, which I have had listed as number 37.

17 Q And that would be the fourth strike?

18 A Yes, sir.

19 Q And then your next strike -- you skipped
20 over -- number 14 in the pool was a Yomi M. John,
21 J-o-h-n?

22 A Yes.

23 Q And that was your fifth strike, correct?

24 A Yes, I had listed as juror number 54.

25 Q Right.

1 Q And then you skipped over number 16 in the
2 pool and that was Ms. Irene Collins, correct?

3 A Well, I didn't strike her but Ms. Irene
4 Collins was number 16 in the pool, if that's your
5 question.

6 Q Okay. But I mean, when we accepted her,
7 is that correct, the State?

8 A Yes, sir.

9 Q And then you had to follow suit and accept
10 her and you did?

11 A Right.

12 Q And at the time you accepted her you had
13 on your chart there D plus, correct?

14 A Yes.

15 Q And you made no complaint to His Honor at
16 that time; isn't that correct?

17 A I believe I made my complaint at some
18 point, re-urged my cause strikes. I don't remember
19 the time I did that. I think I did that after we did
20 all of our strikes.

21 Q But I am saying at the time we accept Ms.
22 Collins, the State.

23 A Right.

24 Q And when you accepted Ms. Collins, there
25 was no complaint lodged to His Honor the record will

1 reflect?

2 A I think that's right. I'm not arguing
3 with that. I just don't remember. I remember at one
4 point I explained -- I renewed my objections for cause
5 because I had already asked -- objected to this
6 particular juror for cause. I renewed them at some
7 point. I think you are right. I don't think I did it
8 then. I may have done it later on.

9 Q Right. And you understand the procedure
10 in a capital case, correct?

11 A Well, I think so.

12 Q Right. And then the next strike was the
13 number 17, a Bruce Alan C-r-o-u-c-h?

14 A Yes.

15 Q And that was your sixth strike?

16 A Yes.

17 Q And Mr. Crouch had a D plus as well,
18 correct?

19 A Yes.

20 Q And we accept Mr. Crouch, correct?

21 A Yes.

22 Q And then you struck Mr. Crouch?

23 A Yes.

24 Q And then we proceeded on.

25 Now, with juror number 4, I think you had

1 already listed down you tried to get that juror for
2 cause early on, correct?

3 A I don't know. I'll have to check to see.
4 I'll take your word for it if I did.

5 Q Okay. That's Mr. Kelly. And then you
6 tried to get Ms. Pedigo for cause on voir dire?

7 A Yeah, my notes reflect that.

8 Q And failed to do so. And then you tried
9 to get Ms. A-l-a-i-m-o for cause during voir dire?

10 A Ms. Alaimo, yes, I believe that is
11 correct.

12 Q And you failed to get that person for
13 cause?

14 A Right.

15 Q And then you tried to get Mr. Williams,
16 Daniel Lee Williams, number 10 in the pool, for cause
17 during voir dire?

18 A That's correct.

19 Q And you failed to get that person for
20 cause?

21 A Apparently.

22 Q And then you tried to get Mr. Yomi M. John
23 for cause during the voir dire?

24 A I don't know that. My notes don't reflect
25 that. You are probably right. I just don't know

1 that.

2 Q And you failed to get that a person for
3 cause. And then you tried to get Ms. Collins for
4 cause during voir dire?

5 A I do. I refreshed my notes on Ms. Collins
6 and I believe that is correct. Yes.

7 Q And then you tried to get Mr. -- I'm sorry
8 -- tried to get Crouch for cause.

9 But you will agree with me that everybody
10 that you tried to get for cause during the regular
11 voir dire, when you got a chance to exercise the
12 strike peremptorily, you did strike them except Ms.
13 Collins?

14 A I don't know that.

15 Q Well, I am saying by the time you got to
16 Ms. Collins --

17 A I don't know that. You may be right. I
18 haven't looked at each one of these to determine if I
19 had made a motion for cause on those particular
20 jurors. If that's what the record reflects, then,
21 yes.

22 Q And when you accepted Ms. Collins who had
23 a D plus, and you had to affirmatively make a step to
24 do that but yet you struck Mr. Crouch with D plus; is
25 that correct?

1 A That's correct.

2 Q And at the time you did that you still had
3 a hand full of strikes?

4 A I still had a number of.

5 Q Ten strikes?

6 A That's right. We were striking these so I
7 knew the entire panel so I had to allocate my strikes
8 for the other jurors that were still coming up that I
9 had rated an F or a D minus.

10 Q And you were aware that His Honor would
11 have considered additional strikes if you exercised
12 all your strikes, exhausted your strikes, and the
13 occasion dictated such?

14 A I knew if I asked for them that he would
15 listen to me. I didn't know whether I would get
16 additional strikes.

17 Q I understand.

18 Now, are you aware -- and I mean you have
19 did a lot of trial work, correct?

20 A I have tried a lot of cases.

21 Q And a lot of appellate work?

22 A I have done appellate.

23 Q Are you aware in the capital case where
24 the State is seeking a death penalty where the Judge
25 refuses to grant a couple of strikes?

1 A I have never done an appeal on a capital
2 case and I have never tried a capital case before.

3 Q Are you aware or read any case that the
4 Judge refused to grant defense counsel?

5 A I have not. I don't know whether I have
6 or not, Mr. Vinson. I really don't. I have -- I'm
7 not a capital appellate lawyer. I have never looked
8 at that issue.

9 Q It's common knowledge in most capitals, in
10 death cases, if the defense exhausts the strikes, the
11 Court will generally grant a couple of more strikes?

12 A I did not know that.

13 Q You weren't aware of that?

14 A I was told afterwards by Mr. McDonald,
15 hey, you might have counted on some extra but I did
16 not know that when I was making these strikes. I did
17 not know it was a guarantee at all.

18 Q But you did ask for two additional
19 strikes?

20 A I did.

21 Q And you didn't even use those, did you?

22 A No, I didn't. But when I got those, I was
23 at juror number 41, I believe, and if I had used those
24 strikes that I would have gotten, I would have ended
25 up with a worse juror at that point than I would have

1 if I didn't use those two strikes.

2 Q But you would agree that is your duty to
3 exercise your strikes and then ask the Court for
4 additional strikes when you run out? That's your
5 duty?

6 A The law says -- I don't know about my duty
7 but the law says if you have used up all your strikes,
8 you can ask the Court for additional strikes.

9 Q And what I am saying, you can't go for
10 strikes while you still have strikes so your duty is
11 to exhaust the strikes, if necessary?

12 A That is true. But most capital cases are
13 not picked in this manner. In most capital cases, one
14 juror comes up and after you voir dire your juror,
15 then you make your selection or you don't make your
16 selection, at least that's what I was told.

17 Here we had a regular panel, and I was
18 able to look at this exhibit one here and I was able
19 to allocate the really bad jurors and the ones that I
20 wanted to get rid of the most. So although I could
21 have used up all 12 of my strikes on the first 12, I
22 suppose if I had done that, I knew good and well what
23 I had lurking upon me in the next three or four
24 columns.

25 Q But you had, I mean, this wasn't an

1 overnight thing that juror had been put in the pool
2 for sometime. They had been going in the pool. You
3 had an opportunity to go home in the evening, rehash
4 the day. It wasn't like an immediate response that
5 you had to make a selection at that time?

6 A No, not at all.

7 Q You were allowed to think?

8 A No, sir, not at all. That's why I had an
9 a big chart. I knew if I struck Ms. Collins, I was
10 going to have to eat Mr. Darrow, number 120, or Ms.
11 Miller, number 122, which I had rated in my mind even
12 much worse than Ms. Collins.

13 Q But just a couple of last questions here,
14 with respect to Ms. Collins, have you had a chance to
15 review your voir dire of Ms. Collins?

16 A No.

17 Q Would you like to do that sometime today.
18 The Judge will make a ruling tomorrow. Could you
19 review your voir dire of Ms. Collins and see if you
20 asked her any specific questions about any criminal
21 background?

22 A I'm sure I didn't ask her any questions
23 about her criminal background because I was relying
24 upon what she put on her questionnaire.

25 Q Again, too, you would agree with me that

1 this is a tactical decision that an attorney makes
2 whether to go into those matters or not, correct?

3 A Yes. But that decision is made upon the
4 sworn questionnaire you get from the jury panel.

5 Q And Ms. Collins was sworn when she took
6 the stand?

7 A I'm sure she was.

8 Q Because the record reflects that?

9 A Yeah. That's the way we normally did it.
10 I'm sure she was.

11 Q And she is sworn at that time to tell the
12 truth?

13 A Right.

14 Q And everything you put to her you didn't
15 find any untruthfulness with it?

16 A No. My understanding, also, she was sworn
17 down there when she filled out that questionnaire,
18 too.

19 Q But you know from your own eyes that she
20 was sworn in the courtroom?

21 A Well, we also had a discussion and were
22 told --

23 Q Just if I could.

24 A And they were told and, yes, I did know
25 from my own eyes that she was sworn when we did our

1 voir dire.

2 Q And you know you had an opportunity to
3 address any potential question about criminal history
4 when you were voir diring her?

5 A We had a time limit. Yes, You are right.
6 You are absolutely right, Mr. Vinson. I knew that she
7 would have to answer any question that I propounded
8 that was a relevant question.

9 Q Good. So you can't sit here and say on
10 the record that you put any question to Ms. Collins
11 and she was dishonest with you?

12 A Unless you say that I had input in that
13 questionnaire, in which case I can.

14 Q On the record, the questionnaire was not
15 on the record, sir, the questionnaire?

16 A The questionnaire was certainly on the
17 record.

18 Q The question: When you had a chance to
19 speak directly to Ms. Collins, did she ever tell you
20 an untruth on any question you asked her that you know
21 of?

22 A When I talked to her, one on one, in the
23 voir dire, I didn't ask any question about her prior
24 criminal record and, as such, she didn't have an
25 opportunity to address that issue.

1 Q And you had an opportunity to do that?

2 A I did, had I not believed she had already
3 answered that question.

4 Q And, incidentally, since we are here, did
5 you ever have an investigator looking for David
6 Balderas?

7 A No.

8 Q Well, who did --

9 A Is Balderas --

10 Q -- look David Balderas?

11 A -- the extraneous guy?

12 Q He was an extraneous guy. Didn't you have
13 an investigator looking for him?

14 A At one point I did until we had our
15 hearing back in chambers where I was led to believe
16 that we weren't going to go into the extraneous
17 offense. And at that point I laid off on extraneous
18 offenses. They are not going to come in.

19 Q When was this investigator looking for
20 David Balderas?

21 A I don't know if he looking for him or
22 running records or what he was doing but it would have
23 been shortly prior to the hearing that we had on the
24 extraneous offenses.

25 Q Let's make it short. He was looking for

1 Mr. Balderas way before we gave you any information on
2 the subpoena on Mr. Balderas, wasn't he?

3 A If Balderas is the extraneous guy?

4 Q Yeah, that's what we are talking about.

5 A I don't believe it is true. It may be but
6 I don't remember it that way.

7 Q Do you have any reason why Mr. Balderas
8 would have told me that somebody was looking for him,
9 had been looking for him, an investigator?

10 A I don't know everything my investigator
11 did. And, I mean, I'm not quarrelling with you. I
12 don't remember that we concentrated on Balderas until
13 after you informed me about the -- gave me those
14 extraneous but I may be wrong about that. I don't
15 remember that.

16 Q But Mr. Balderas wasn't a total stranger
17 to you nor a stranger to you or your client, was he?
18 I'm not going into attorney client privilege. I'm not
19 saying -- he wasn't a total stranger?

20 A I don't recall. I would have to look at
21 my notes. I do not recall what knowledge I had of Mr.
22 Balderas prior to you informing me the morning you
23 informed me of the extraneous offenses on punishment.

24 Q But your only claim that you were
25 surprised that we were going to be able to use it.

1 You weren't surprised that Mr. Balderas possibly could
2 be a witness? That didn't surprise you?

3 A Well, I believe that the day you told me
4 that it was going to be an extraneous offense you had
5 also subpoenaed -- had issued a subpoena for it.

6 Q Yeah. And I made you aware of that.

7 A I believe you did. Yes.

8 Q And it didn't come as a surprise to you,
9 did it, in terms of who the witness would be?

10 A In terms of who it was going to be, no.

11 Q No.

12 MR. VINSON: I have no further questions,
13 Your Honor.

14

15 EXAMINATION

16 BY MR. CHARLTON:

17 Q The bottom line, I think, from my
18 perspective, at the time when you were exercising your
19 peremptory challenges is the reason you chose not to
20 exercise a peremptory challenge on Irene Collins
21 because you thought you were looking at worse jurors
22 down the road and wanted to save the strikes?

23 A No question about it.

24 Q Had you known what you know now about Ms.
25 Collins, would you have exercised a peremptory on her?

1 A Absolutely.

2 Q When you were in voir dire, you were in
3 one of these smaller rooms that is reserved for
4 capital jury selection; is that not right?

5 A During most of it. Sometimes we came down
6 to the courtroom but most of the time we were in one
7 of two rooms that we pick capital jurors out.

8 Q Can you describe the physical plant or the
9 physical description of the small courtroom where you
10 were.

11 THE COURT: What's the relevancy?

12 MR. CHARLTON: The State has argued on
13 their last hearing that they had an open file -- or
14 not an open file -- had a file laying out on the table
15 with the criminal histories of the jurors that was
16 available to the defense. And I can proffer the
17 testimony as easily but the particular room where this
18 was done has a very large post in the middle between
19 the defense table and the prosecution's table, making
20 it physically cumbersome to reach over and take papers
21 off the table of the prosecution.

22 THE COURT: Well, that's, frankly, not
23 accurate. We were in one room at some point in time,
24 and I know for an entire week we moved over to the
25 larger of the two rooms. One those two rooms

1 certainly did not have that column that was impeding
2 anybody's view. So you proffered what you need to. I
3 don't want to rehear everything we heard last
4 Thursday. I think it's been evidenced that the file
5 was there, that it was made available. And I think we
6 ought to move on.

7 MR. CHARLTON: Thank you, Your Honor.

8 Q Did you ever see the computer printout
9 history of Irene Collins of her criminal history?

10 A Not to my recollection, no.

11 Q Were you ever told or ever given those
12 documents by the prosecution?

13 A Not that I was told.

14 Q Before were you ever told before her voir
15 dire that those documents were available to you?

16 A Not that I am aware of.

17 Q About, Mr. Balderas, I have some documents
18 that I would like to show to you.

19 MR. CHARLTON: May I approach?

20 THE COURT: Certainly.

21 MR. CHARLTON: I will tender for
22 admission, Your Honor, Defendant's 28 and 29, that
23 being a complaint, a motion to dismiss, actually --
24 I'm sorry, information goes on the motion to dismiss
25 and an indictment and a motion to dismiss on a David

1 Rene Balderas and ask that be made part of the record.

2 I would like to use them for examination of this
3 witness.

4 THE COURT: Mr. Vinson.

5 MR. VINSON: For what purpose, Your
6 Honor?

7 MR. CHARLTON: Merely whether they were
8 shown to Mr. Odom before Mr. Balderas testified.

9 THE COURT: All right.

10 MR. VINSON: May I see them?

11 First of all, I would like to make two
12 comments. First of all, we were not aware of it; and,
13 second of all, there's a complainant in here and we
14 wouldn't have the authority to just dismiss a case
15 where we have a complainant alleging an injury; and,
16 thirdly, it's not an impeachable offense. And even if
17 it had been dismissed, I would have shown it to him if
18 I had knowledge, if it is not impeachable unless he
19 could tell me some reason it is necessary. These are
20 not impeachable offenses.

21 MR. CHARLTON: Again, our position is, as
22 we have reiterated previously, is that there was a
23 motivation for Mr. Balderas to testify the way he did,
24 and we think that these are simply other aspects of
25 that motivation.

1 THE COURT: When were they dismissed?

2 MR. VINSON: This was dismissed, Your
3 Honor, by someone in misdemeanor back on the 23rd day
4 of August, 1996, and that allegation is against a
5 Sylvia Casillas, C-a-s-i-l-l-a-s. So what authority
6 would Mr. Smyth or myself have to dismiss a case where
7 we have a complainant?

8 THE COURT: Let's not be walking up and
9 back and forth. Please take your seat.

10 The motion is overruled. If you want to
11 attach it to the appellate record, we can do that.

12 MR. CHARLTON: We have no further
13 questions of Mr. Odom.

14 THE COURT: Thank you.

15 Anything further from the State?

16

17 EXAMINATION

18 BY MR. VINSON:

19 Q What you are saying you just don't
20 remember if you checked those criminal histories?

21 A No, no. And I believe I testified to this
22 the other day. I have no independent recollection you
23 showed me --

24 Q Just a minute.

25 MR. CHARLTON: Objection, let him answer

1 his question.

2 MR. VINSON: We can go on for a day.

3 MR. CHARLTON: He asked a question and he
4 is entitled to answer it the best way he can.

5 A There were occasions when I was shown
6 criminal history records. As to Ms. Collins, I have
7 no independent recollection that I wasn't shown this
8 until I go and look at my notes and realize that there
9 is no notation in my notes. And I don't remember any
10 criminal history record on her, which is why I say
11 that I was never shown any criminal history record on
12 Ms. Collins. But as far as every single time you did
13 show me one or you didn't show me one, I would have to
14 look at my notes to try to figure that out.

15 Q Okay. Now, you do realize that we never
16 pointed out criminal histories on anybody. We brought
17 them in the courtroom. We made you aware that they
18 were there and we left them on the table. We never
19 hid them.

20 A I don't know about never hiding them but I
21 have a different recollection of the procedure. And I
22 definitely remember several occasions by several more
23 than two wherein I was specifically given a criminal
24 history record of a potential venireman that we were
25 doing a voir dire on. I do not recall any arrangement

1 on the desk. That's not to say that you didn't have
2 something on the desk that I could have seen. I just
3 don't recall that arrangement.

4 Q What I am saying, we always ran those
5 criminal histories the minute we got those jurors. We
6 run the criminal history and that was the procedure.
7 And we would bring them back the next day, after they
8 were run. We bring the criminal histories back with
9 all the jurors who had a criminal history and that was
10 the way it was done. It was brought in every day.
11 Nothing was hidden from you.

12 MR. CHARLTON: Object to this question.
13 Is that a question or Mr. Vinson testifying?

14 THE COURT: I agree we testified last
15 week. If there's something new, we will go into it,
16 and I pretty well understand it. And I think the
17 record is clear as to what the State's position is
18 with regard to those records. I think Mr. Odom's
19 position is pretty clear as to what his understanding
20 was.

21 MR. VINSON: We will move on, Your Honor.

22 Q (Mr. Vinson) And one final question: I
23 think it was later determined that, based on what you
24 are saying, you later determined -- somebody
25 determined -- after the trial that Ms. Collins had

1 received deferred adjudication for public lewdness?

2 A I was told that and shown the records.

3 Yes.

4 Q And your client had received a deferred
5 adjudication for public lewdness?

6 A Right.

7 Q Kind of go hand in hand?

8 A It's not that she received the deferred
9 adjudication. The reason I would have struck her
10 because she had, in my view, misrepresented to me on a
11 questionnaire a matter which means that every question
12 that I asked her in qualifying her for mitigation
13 issues and qualifying her for the future dangerousness
14 issues, she could not be trusted under oath because
15 she had already shown a propensity to misrepresent
16 under oath her true feelings about a capital case.
17 It's not because if she had answered the question,
18 yes, I received a prior public lewdness, I might have
19 wanted her as a juror. The fact that she tried to
20 hide that in my mind would make her totally
21 distrustful to put on a capital case.

22 MR. VINSON: I have nothing further.

23 THE COURT: Mr. Charlton.

24 MR. CHARLTON: Nothing further.

25 THE COURT: May he be excused?

1 MR. VINSON: May we mark number 2.

2 (Whereupon, State's Exhibit No. 2 was
3 marked for identification.)

4 MR. CHARLTON: We are able to state
5 unequivocally we have no other witnesses or evidence
6 to present.

7 THE COURT: What says the State?

8 MR. VINSON: We have nothing further to
9 present. We want the record to reflect initially the
10 fact defense's striking charts and we ask that it be
11 reflected as State's Exhibit 2.

12 MR. CHARLTON: No objection.

13 MR. VINSON: And the State has nothing
14 further.

15 THE COURT: And nothing further from the
16 defense?

17 MR. CHARLTON: No, sir.

18 THE COURT: And nothing else that we need
19 to do?

20 MR. CHARLTON: I think you have resolved
21 the issue to the documents attached to the record.

22 THE COURT: Very well. I am ready to make
23 a ruling. Any objection?

24 Do you want to provide some legal
25 authority to us? You can provide me with legal

1 authority but I am ready to make a ruling.

2 Okay. Motion for new trial is denied.

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